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15 *Attorneys for Plaintiff VERNON UNSWORTH*

16  
17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 VERNON UNSWORTH,

20 Plaintiff,

21 v.

22 ELON MUSK,

23 Defendant.

Case No. 2:18-cv-08048-SVW (JC)  
Judge: Hon. Stephen V. Wilson

**DECLARATION OF NICOLE JENNINGS  
WADE IN SUPPORT OF PLAINTIFF  
VERNON UNSWORTH'S RESPONSE IN  
OPPOSITION TO DEFENDANT'S  
MOTION IN LIMINE NO. 5 TO  
EXCLUDE THE EXPERT OPINION OF  
DR. BERNARD J. JANSEN**

Trial Date: Dec. 2, 2019  
Hearing Date: Nov. 5, 2019  
Time: 3:00 pm  
Courtroom: 10A

1           **I, Nicole Jennings Wade, declare as follows:**

2           1.       I am an attorney at the law firm of L. Lin Wood, P.C., counsel of record  
3 in this action for Plaintiff Vernon Unsworth. I am a member in good standing of the  
4 State Bar of Georgia and am admitted *pro hac vice* to practice before this Court. I  
5 have personal knowledge of the facts set forth in this declaration and, if called to  
6 testify, I would testify thereto.

7           2.       I submit this declaration in support of Plaintiff Vernon Unsworth's  
8 Response in Opposition to Defendant's Motion in Limine No. 5 to Exclude the  
9 Expert Opinion of Dr. Barnard J. Jansen.

10          3.       Attached hereto as **Exhibit 1** is a true and correct copy of the November  
11 4, 2019, deposition of Dr. Bernard J. Jansen taken in this case, with excerpts cited  
12 by Plaintiff highlighted.

13               I declare under penalty of perjury under the laws of the State of Georgia and  
14 the United States that the foregoing is true and correct and that this document was  
15 executed in Atlanta, Georgia.

16  
17       Dated: November 14, 2019

**L. LIN WOOD, P.C.**

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19                       By: /s/Nicole Jennings Wade  
20                       Nicole Jennings Wade  
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## **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

VERNON UNSWORTH,

Plaintiff,

vs.

Case No. 2:18-cv-8048-svw

ELON MUSK,

Defendant.

VIDEO DEPOSITION OF BERNARD J. "JIM" JANSEN, PhD

November 4, 2019

9:57 a.m.

L. Lin Wood, P.C.

1180 West Peachtree Street

Suite 2040

Atlanta, Georgia

Valerie N. Almand, RPR, CRR, CRC

Chelsea Diallo, Legal Video Specialist

Job No. 47149



BERNARD J.JANSEN, PHD

November 04, 2019

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BERNARD J.JANSEN, PHD

November 04, 2019

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BERNARD J. JANSEN, PHD

November 04, 2019

1 THE VIDEOGRAPHER: Okay. We are on the  
2 record. Today's date is November 4th, 2019. The  
3 time is approximately 9:57 a.m. This will be the  
4 videotaped deposition of Jim Jansen.

5 Will the attorneys present please state  
6 their names and whom they represent.

7 MR. GRUNBERG: Jonathan Grunberg for the  
8 plaintiff.

9 MS. WADE: Nicole Wade representing the  
10 plaintiff.

11 MR. SCHWARTZ: And Robert Schwartz for  
12 the defendant.

13 THE VIDEOGRAPHER: Will the court  
14 reporter now swear in the witness.

15 BERNARD J. "JIM" JANSEN, PhD,  
16 being duly sworn, was examined and testified as  
17 follows:

18 EXAMINATION

19 BY MR. SCHWARTZ:

20 Q. Good morning, Mr. Jansen.

21 A. Good morning, sir.

22 Q. You've just taken an oath to tell the  
23 truth and the whole truth to each question that I  
24 ask. Do you understand that's the same oath that  
25 will be administered to you or would be

1 administered to you if you were testifying in  
2 court in front of the judge and jury in this case?

3 A. Yes, I do.

4 Q. The law expects witnesses who are  
5 faithful to that oath will give testimony that is  
6 candid, forthcoming and free of deception. Is it  
7 your firm intention to give answers to my  
8 questions throughout this deposition that are  
9 candid, forthcoming and free of deception?

10 A. Absolutely.

11 Q. Although we're sitting in a conference  
12 room in an office, your testimony here has the  
13 same legal effect that it would if you were giving  
14 it in a courtroom in this case. Do you understand  
15 that as well?

16 A. Yes, I do.

17 Q. Okay. Please make sure that you've heard  
18 and understand each question that I ask before you  
19 answer it. If you don't hear or understand a  
20 question I ask, will you let me know?

21 A. Yes, I will.

22 Q. If you answer a question I'm going to  
23 assume, then, that you heard it and you understood  
24 it. Do you understand?

25 A. Yes, I do.



1 Q. Is that fair?

2 A. That seems fair.

3 Q. Okay. You will be given a written  
4 transcript of the deposition today. By the way,  
5 let's back off. Have you been deposed before?

6 A. Yes, I have.

7 Q. Approximately how many times?

8 A. 12 times.

9 Q. So you're generally familiar with the  
10 procedures.

11 A. I am, but I would prefer that you assume  
12 I'm not and just so we both know the rules and  
13 what the expectations are. So please go ahead.

14 Q. You will receive a written transcript of  
15 the deposition shortly after it's completed.  
16 We'll work out arrangements with counsel as to how  
17 quickly that will happen at the end of the  
18 deposition.

19 You're allowed, in fact you're required  
20 to review that transcript and to make sure that it  
21 accurately reflects what you said here today. If  
22 you make any changes to the transcript that are  
23 substantive in nature, however, for example you  
24 answer yes here in this room, you cross out the  
25 yes and you write no or you start writing in some

1 additional information, then I or anybody else is  
2 free at the time of trial to comment on those  
3 changes and to argue that they indicate that  
4 you're not a credible witness. Do you understand?

5 A. Yes, I do.

6 Q. Okay. So for the benefit of the court  
7 reporter I'm going to try really hard not to begin  
8 a new question until you've finished your answer,  
9 and when I'm asking questions even if you're 99  
10 percent sure you know what I'm going to ask you, I  
11 would request or do request that you wait until I  
12 finish my questions before you begin your answer,  
13 because the court reporter can take down only one  
14 person at a time, and pausing will also allow  
15 counsel for the plaintiff to object if they wish  
16 to do so. Will you do your best to do that?

17 A. Yes, I will.

18 Q. Great. Your answers need to be comprised  
19 of words as opposed to gestures or things like  
20 uh-huh or huh-uh, because nobody really knows what  
21 that means when it shows up in a transcript, okay?

22 A. Okay.

23 Q. Great. Let me know if you want to take a  
24 break. The only caveat is that you have to answer  
25 a question before you say, Let's take a break,



1     okay?

2             A.    Okay.

3             Q.    Great.  Are you taking any medication  
4     today that would interfere with your ability to  
5     hear my questions, understand them, or answer them  
6     truthfully?

7             A.    No.

8             Q.    All right.  Let's begin.

9             MR. SCHWARTZ:  I'm not sure what our next  
10    exhibit number is, but I think if I skip a couple  
11    from Friday -- I think we were around 128 or 129.

12            MS. WADE:  I may have it right here,  
13    actually.  I think this is my -- yeah, I do.

14            MR. SCHWARTZ:  Just to be careful why  
15    don't we start with 132.  So this will be 132.

16                    (Defendant's Exhibit 132 marked)

17            MR. SCHWARTZ:  Actually, this is more  
18    than I wanted to be.  What I'd ask is just for  
19    convenience during the deposition -- actually, you  
20    know what, this will be okay.  Trees have already  
21    given up their lives.

22            MR. GRUNBERG:  And then some, in  
23    California.

24            THE WITNESS:  Holy moly.

25            MR. SCHWARTZ:  Sorry.  Seriously, let me

1 start again.

2 BY MR. SCHWARTZ:

3 Q. So the court reporter has placed before  
4 you what we've marked as Exhibit 132, what I  
5 believe to be, but I want you to confirm, is a  
6 true and correct copy of your report and exhibits  
7 in this case. Could you take a look at it for a  
8 moment and just confirm that that's correct.

9 A. Sure. Without looking at all 158 pages,  
10 it looks like my report.

11 Q. Okay, great. And then what I want to do  
12 is then mark some of the individual pieces  
13 separately so that we can get to them faster  
14 during the deposition, and I apologize. The idea  
15 was that just the report would be in Exhibit 132  
16 instead of everything, but let's mark that as our  
17 next exhibit, this be 133?

18 (Defendant's Exhibit 133 marked)

19 BY MR. SCHWARTZ:

20 Q. Mr. Jansen, if you could look at Exhibit  
21 133 and tell us or confirm for us that this is a  
22 true and correct copy of the curriculum vitae you  
23 attached as Appendix A to your report.

24 A. Without looking at every page, it looks  
25 like the CV that I attached.



1 Q. If you need more time to confirm to look  
2 at it, let me know.

3 A. It looks close enough. Yes, it is.

4 (Defendant's Exhibit 134 marked)

5 BY MR. SCHWARTZ:

6 Q. Mr. Jansen, Exhibit 134 is a copy of  
7 pages 99 and 100 from your report. It's  
8 Appendix B. Do you recognize this as Appendix B  
9 from your report?

10 A. Yes, it looks like Appendix B from my  
11 report.

12 Q. And is this a complete list of testimony  
13 you've given in the last four years?

14 A. Yes.

15 (Defendant's Exhibit 135 marked)

16 BY MR. SCHWARTZ:

17 Q. Okay. Exhibit 134, can you confirm for  
18 us that this is a true and correct copy of  
19 Appendix C from your report titled Documents  
20 Referenced?

21 A. Yes, this looks like Appendix C.

22 Q. I'm sorry, this is 135, yeah, 135. This  
23 will be 136. Okay, 136. All right.

24 (Defendant's Exhibit 136 marked)

25 BY MR. SCHWARTZ:

1 Q. And we've placed before you as Exhibit  
2 136 Appendix D from your report, pages 104 through  
3 126. Can you confirm for us that this is, in  
4 fact, a true and correct copy of Appendix D to  
5 your report titled Links to Articles Containing  
6 the Defaming Statements (all functional on the  
7 date that I viewed the article.)

8 A. Yes, this looks like Appendix D of my  
9 report.

10 (Defendant's Exhibit 137 marked)

11 BY MR. SCHWARTZ:

12 Q. All right. And can you confirm for us  
13 that the document the reporter has marked and  
14 handed to you as Exhibit 137 is a true and correct  
15 copy of Appendix E to your report, pages 127  
16 through 157, titled Supporting and Supplementary  
17 Documents.

18 A. Yes, this looks like Appendix E.

19 (Defendant's Exhibit 138 marked)

20 BY MR. SCHWARTZ:

21 Q. This is 138. And can you confirm for us  
22 that Exhibit 138, which the reporter just handed  
23 to you, is a true and correct copy of page 158 of  
24 your report, Appendix F, titled Lists of Countries  
25 With Sites That Disseminated Articles Containing



1 the Defaming Statement?

2 A. Yes, this looks like Appendix F.

3 Q. All right. So, why don't we go back now  
4 to Exhibit 132. I'm just wondering should we take  
5 out the duplicative pages, just to make it easier.  
6 I really intended it to be only your report to  
7 page 40.

8 MR. SCHWARTZ: We'd even be able to  
9 staple it.

10 MR. SCHWARTZ: Yes. Can we agree that  
11 Exhibit 132 is to contain just pages 1 through 40  
12 of your report and the additional pages can be put  
13 aside. Is that okay, Counsel?

14 MR. GRUNBERG: That's fine.

15 MR. SCHWARTZ: All right.

16 BY MR. SCHWARTZ:

17 Q. So can you -- yes -- do that, and then  
18 maybe just hand back to me the extraneous pages.

19 A. Yes, sir.

20 Q. Awesome. I'll have these recycled. All  
21 right.

22 So let's take a look at Exhibit 132, and  
23 please turn to page 5, paragraph 20 and let me  
24 know when you have that in front of you.

25 A. Paragraph 20?

1 Q. Paragraph 20, page 5.

2 A. I am there.

3 Q. Okay. Does this paragraph 20 on page 5  
4 of your report state all of the opinions you plan  
5 to give in this case?

6 A. Well, this is the conclusion opinions. I  
7 mean, my opinions are presented in the entire  
8 report.

9 Q. Well, are these conclusions -- or I  
10 should start again. Are the matters stated in  
11 paragraph 20 of your report all of the conclusions  
12 that you will be offering as testimony in this  
13 case?

14 A. Well, yeah. This is what I was asked to  
15 do that -- as far as presented as a summary  
16 conclusion in paragraph 20.

17 Q. So there are no other conclusions you're  
18 planning to offer in the trial of this case other  
19 than those stated in paragraph 20?

20 A. Well, and the supporting statements in my  
21 report.

22 Q. Right. I understand. In other words,  
23 paragraph 20 is supported by other information  
24 throughout your report, but these are the  
25 conclusions that that other information supports.



1 Is that what you're saying?

2 A. Yeah, these are the conclusions and  
3 summaries of the research and analysis I did,  
4 presented in my report and, of course, in the  
5 references that go with it.

6 Q. Let me just drill down that a little bit  
7 more. So in terms of the extent to which the --  
8 I'm just going to quote from paragraph 20, The,  
9 quote, defaming statements made by Mr. Elon Musk  
10 asserting that Mr. Vernon Unsworth is a pedophile,  
11 a child rapist, married a child and/or is involved  
12 in child sex trafficking, are there any other  
13 opinions you are planning to give in this case  
14 regarding the extent of that dissemination that  
15 are not set forth in subparts a., b., and c. of  
16 that paragraph?

17 A. Well, as of this time I've been not asked  
18 to update these numbers, so at -- at the date I  
19 submitted this report those are the numbers that  
20 my analysis had reached.

21 Q. As you sit here today in this deposition  
22 are you aware of -- I withdraw that. We'll come  
23 back to that.

24 Let me -- let me ask you about paragraph  
25 20.b. It says, The defaming statements appeared

1 in at least 605 stories or articles. Do you see  
2 that?

3 A. Yes, sir.

4 Q. And those articles that are listed, those  
5 are the articles that are listed in Appendix D to  
6 your report?

7 A. Appendix D lists the links to those  
8 articles, yes.

9 Q. So if during the course of this  
10 deposition -- let me start again.

11 If in the course of this deposition I say  
12 your, quote, list of articles or, quote, articles  
13 on your list or the list, will you understand that  
14 I'm referring to the 605 articles on that list in  
15 Appendix D to your report?

16 A. Yes, sir.

17 Q. Okay. Now, looking down on the same page  
18 in paragraph 22 you say, These numbers are  
19 conservative. Do you see that?

20 A. Yes.

21 Q. Okay. And then you list some things in  
22 subparagraphs a. through m. of paragraph 22 that  
23 one could have done which might have resulted in a  
24 number of websites and articles and unique  
25 visitors to be higher; is that correct? I should



1 say higher than the number you calculated in  
2 paragraph 20.c., 98 million.

3 A. The -- sort of, yeah. In paragraph 22  
4 and in the subcomponents, those are statements  
5 that -- why the number is conservative, and if I  
6 had investigated those they may have increased the  
7 number of articles presented in paragraph 20.

8 Q. Okay. So just to be clear on your  
9 answer, what you're saying is the -- when you said  
10 the subcomponents of paragraph 22 you meant  
11 subparts a. through m., correct?

12 A. A. through m., yes, sir.

13 Q. Is it correct, though, that you did not  
14 perform those tasks?

15 A. The -- no, it is not correct.

16 Q. You did perform those tasks.

17 A. Well, I performed some of those tasks,  
18 but I did not include the numbers I got in my  
19 numbers presented in paragraph 20.

20 Q. So is it correct that you are not  
21 expressing any opinion in this case as to what  
22 your numbers would be in terms of articles or  
23 stories, website count or potential daily unique  
24 visitors had you done any or all of the tasks you  
25 identified in paragraph 22.a. through m.?

1           A. If I understood your question correctly,  
2 no, because in my report I do present some numbers  
3 from some of these subtasks. But, as I state,  
4 they're not included in my count of 350 sites, 605  
5 articles and 98 million potential daily viewers.

6           Q. Well, I just want to make sure I  
7 understand what -- let me back up for a second.

8           A. Sure.

9           Q. You understand this is my only  
10 opportunity to ask you questions about your work  
11 before trial.

12          A. Sure. Yes.

13          Q. Okay. And what I want to do is make sure  
14 I understand the entirety of the testimony that  
15 you plan to give at trial.

16          A. Uh-huh. (Nods head affirmatively.) Yes.

17          Q. And if there is some number or are some  
18 numbers different than the 354 media or other  
19 sites, different than the 605 stories or articles,  
20 different than the 98 million potential daily  
21 unique visitors, I'd like to know that now so I  
22 understand what you're planning to say at trial.  
23 Do you understand why I'm asking that?

24          A. Yes.

25          Q. Okay. So is there some number you can



1 tell me today that is different in any way from  
2 the numbers in paragraph 20 of your report based  
3 on any additional work or tasks that you  
4 identified in paragraphs 22.a through m of your  
5 report?

6 A. Well, yeah, that's a little different  
7 than your previous question, because the numbers I  
8 present in paragraph 20 and also in the other --  
9 in the summary of my report, that those are the  
10 number of websites, the number of articles and the  
11 number of potential unique viewers. But there is  
12 a whole section of my report where I go through  
13 each of these sub-bullets in paragraph 22 and kind  
14 of explain why they're conservative and also why I  
15 did not include them. But there are some numbers  
16 in there, is what I'm trying to say.

17 Q. Okay. So if you include on-line media or  
18 other sites or any other place where information  
19 containing the defaming statements can be located,  
20 what's the total number you're aware of as you sit  
21 here today of such media or sites, if it's at all  
22 different from the 354 number in paragraph 20.a.  
23 of your report?

24 A. As I explain farther in the report, the  
25 number of sites, 354, 605 articles, 98 million

1 viewers, those are the numbers that are the  
2 summary of my opinions. But there are some other  
3 numbers presented in the report, and I explain why  
4 I'm not including those. So my report already  
5 explains that I'm not including these numbers.

6 Q. All right. So at trial your opinions  
7 will be -- on the issue of the dissemination of  
8 the information of the defaming statements is  
9 going to be the numbers in paragraph 20 of your  
10 report and no other set of numbers.

11 MR. GRUNBERG: Objection, form.

12 A. Those are the -- again, the 354 sites,  
13 605 articles, 98 million potential unique viewers,  
14 those are the summary of my opinions. But as I  
15 presented in my report, there are some other  
16 numbers of social media traffic, for example. But  
17 those do not -- will not alter what I'm saying  
18 here, because I explain in my report that I'm not  
19 including them.

20 BY MR. SCHWARTZ:

21 Q. Okay. So I just want to make sure at  
22 trial I don't hear you say, for example, the 605  
23 stories number is actually low, it's actually some  
24 number greater than 605, because if you take into  
25 account additional articles that might be found or



1 that I did find doing the things I described in  
2 paragraph 22.a. through m., the number is higher.  
3 You're telling me you're not planning on doing  
4 that at trial. You're sticking to 605.

5 A. I'm presenting the 605 articles as a  
6 summary of my opinion, but there are some numbers  
7 there that I explain why it's conservative.

8 Q. Well, how many additional articles as you  
9 sit here today do you believe exists on the  
10 internet that contain the defaming statements if  
11 it's not 605, using any means whatsoever to your  
12 disposal?

13 A. I'm not saying it's not 605. I'm just  
14 saying that I explain why it's a conservative  
15 number in my report.

16 Q. Okay. But as you sit here today are you  
17 aware of any stories or articles in excess of 605  
18 that exist that you're going to testify to at  
19 trial?

20 A. I have not done any additional analysis  
21 beyond the 605 articles and the other data  
22 presented my report.

23 Q. So is the answer to my question no?

24 A. Could you repeat the question?

25 Q. Sure. As you sit here today are you

1 aware of any stories or articles in excess of 605  
2 that exist that you are going to testify to at  
3 trial?

4 A. As I sit here today, no, I'm not aware of  
5 any.

6 Q. Okay. Same question as to the 98 million  
7 potential daily visitors which you had clarified  
8 more precisely as 98,362,092. Are you going to --  
9 based on anything in paragraphs 22.a. through m.  
10 planning to say actually the number is some number  
11 in excess of that at trial?

12 A. As I sit here today, no.

13 Q. After this deposition is over you're not  
14 going to go out and do any new work, are you, such  
15 that any of these -- such as any of the steps  
16 you've described in paragraph 22 of your  
17 deposition -- of your report?

18 A. As I sit here today I am not planning on  
19 it.

20 Q. All right. Okay.

21 Let's go to paragraph 2 -- wait, is it  
22 paragraph 2? Oh, paragraph 12, sorry. It's page  
23 4, paragraph 12. And what you wrote, excuse me,  
24 was, quote -- well, you know what? Paragraph 11  
25 on the prior page, you wrote , In providing my



1 expert opinion I have been asked to respond to the  
2 following question, and then in paragraph 12 you  
3 list out that question; is that correct?

4 A. That is correct.

5 Q. Okay. Does paragraph 12 describe the  
6 entirety of your assignment in this case?

7 A. Paragraph 12 outlines what I was asked to  
8 do for the analysis, yes.

9 Q. Were you asked to do anything not in  
10 paragraph 12? Put it a slightly different way.

11 MR. GRUNBERG: Objection, form.

12 MR. SCHWARTZ: Apology. Let me rephrase  
13 the question.

14 BY MR. SCHWARTZ:

15 Q. Were you asked to do anything in this  
16 case that is not described in paragraph 12?

17 A. Well, paragraph 12 and, of course, the  
18 supporting paragraphs in the report. But I was  
19 not asked to do anything beyond that.

20 Q. All right. And the "that," again I just  
21 want to make sure I understand what's going on  
22 here. What I think I heard in your answer was  
23 what you were asked to do in this case is  
24 described in paragraph 12, how you went about  
25 doing it is described elsewhere in your report.

1 Is that what you -- is that what you meant to say  
2 in your prior answer?

3 A. Well, yeah, along with, you know, the  
4 data and the methodology and the assumptions I  
5 used and defining terms. But paragraph 12 out  
6 lines what I was asked to do in this case.

7 Q. Okay. Let's focus in on a portion of  
8 paragraph 12. The portion I want to focus on is,  
9 quote, What is the level of dissemination of the  
10 defaming statements made by Mr. Elon Musk  
11 asserting that Mr. Vernon Unsworth is -- and then  
12 it continues on. I just want to focus in on the  
13 portion of it as, quote, the level of  
14 dissemination of the defaming statements.

15 What do you mean by the level of  
16 dissemination of the defaming statements?

17 A. And as I define in my report,  
18 dissemination is the distribution of information  
19 or articles. And from that the methodology I used  
20 was to locate the articles on line that contained  
21 the defaming statements.

22 Q. Right. But what does it mean to say  
23 dissemination of the statements? Putting aside  
24 defaming. What do you mean by the dissemination  
25 of the statements?



1 A. I defined it in my report.

2 Q. Can you show me where.

3 A. Yes, sir. Page 7.

4 Q. Okay. And what are you referring to?

5 A. The first line on page 7.

6 Q. Okay. So there it appears -- or let me  
7 start again. There on page 7 in the top bullet  
8 point appears the word dissemination. Do you see  
9 that?

10 A. Yes.

11 Q. And what you wrote is, quote, the act of  
12 spreading or the circulation of information or  
13 articles, close quote. Is that right?

14 A. That is correct.

15 Q. Okay. So dissemination means something  
16 different from viewing, reading or understanding,  
17 correct?

18 A. In terms of definition, yes.

19 Q. Okay. They convey different -- those  
20 words convey a concept different from what the  
21 word dissemination conveys, right?

22 A. Yes, they can.

23 Q. All right. And so what I think I -- and  
24 you can tell me if I'm wrong -- what I think  
25 you're testifying to in this case is what you

1 believe to be the number of potential daily unique  
2 visitors to the websites that hosted the articles  
3 you collected, the articles on appendix 9, as  
4 calculated by a website called SimilarWeb during  
5 the period May to July 2019; is that right?

6 MR. GRUNBERG: Objection, form.

7 A. The -- it includes that. But as I --  
8 there's many other things I kind of outline in my  
9 report. But yes, I am measuring the daily unique  
10 traffic to these sites that hosted one or more of  
11 these articles, and yes.

12 Q. So your work tells us where the  
13 information was available, correct? And by "the  
14 information," what I'm referring to are the  
15 defaming statements that Mr. Musk made about  
16 Mr. Unsworth. Your report tells us where that  
17 information was made available on the internet.

18 A. Among other things, yes.

19 Q. Well, it doesn't tell us to whom it was  
20 disseminated, that information was disseminated,  
21 does it?

22 MR. GRUNBERG: Objection, form.

23 A. Well, these particular sites have  
24 visitors, and so it was obviously disseminated to  
25 those particular visitors. Now, who those



1 visitors are, I do not know.

2 BY MR. SCHWARTZ:

3 Q. But isn't it true that in order for  
4 someone to read any of the defaming statements --  
5 and let me back up for a second. If I use the  
6 term defamatory statements in this deposition will  
7 you understand that I'm referring to what you  
8 describe in paragraph 12 as the defaming  
9 statements there, so I don't have to -- we don't  
10 have to say back and forth the entirety of  
11 paragraph 12?

12 A. Yes.

13 Q. So what -- well, let me ask it this way.  
14 You can't tell us the number of people to whom the  
15 articles that contain statements Mr. Musk made  
16 about Mr. Unsworth were actually disseminated, can  
17 you?

18 MR. GRUNBERG: Objection, form.

19 A. Well, as I mentioned, each of these sites  
20 have visitors that come to the sites, so they were  
21 disseminated to them. If your question is who  
22 they actually are, then no, I don't know that.

23 BY MR. SCHWARTZ:

24 Q. Well, are you giving any testimony in  
25 this case as to the number of people who actually

1 saw any of the articles in your report?

2 A. What I was asked to do is to measure the  
3 level of dissemination, so the distribution,  
4 circulation of these articles and defaming  
5 statements.

6 Q. Right. But are you giving any testimony  
7 as to the number of people who actually saw any of  
8 the articles on your list?

9 A. I've not been asked to do that.

10 Q. Even if you haven't been asked, I need  
11 you to tell me whether, in fact, you are planning  
12 on giving any testimony in this case as to the  
13 number of people who actually saw any of the  
14 articles on your list in Appendix D.

15 A. As I sit here today I'm not planning on  
16 doing that.

17 Q. Do you know how many people actually saw  
18 any of the articles you've identified in your  
19 list?

20 A. Again, I was not asked to do that, so I  
21 didn't investigate that.

22 Q. And so you don't know, do you?

23 A. I didn't investigate it, so, you know, I  
24 don't know.

25 Q. Okay. Are you giving any testimony in



1 this case as to the number of people who actually  
2 read any of the articles on your list?

3 A. As I said, I was asked to measure the  
4 level of dissemination. I was not asked to  
5 measure the number of people that read the  
6 article -- the articles.

7 Q. Sorry, I didn't mean to interrupt. So  
8 you will not be giving any testimony in this case  
9 as to the number of people who actually read any  
10 of the articles on your list.

11 A. I've not been asked to do that. I do  
12 want to point out that in my report there are some  
13 supporting articles, for example, from BuzzFeed  
14 that do report some visitor traffic to the  
15 articles. But I've not been asked to analyze  
16 who's read the articles.

17 Q. Right. My question is a little  
18 different. I appreciate the information. What I  
19 asked is whether you're giving any testimony in  
20 this case as to the number of people who actually  
21 read any of the articles on your list.

22 A. I was not asked to investigate that, so  
23 as I sit here today I'm not planning on providing  
24 that information.

25 Q. All right. As you sit here today do you

1 know how many people actually read any of the  
2 articles you've identified in your report?

3 A. As I said, I was not asked to investigate  
4 that, so I don't know the number of people that  
5 have read the articles.

6 Q. Are you giving any testimony in this case  
7 as to the number of people who believed anything  
8 Mr. Musk said about Mr. Unsworth?

9 A. No.

10 Q. Do you know how many people believed  
11 anything Mr. Musk said about Mr. Unsworth?

12 A. I was not asked to investigate that, so  
13 no.

14 Q. Are you giving any testimony in this case  
15 as to the number of people who think that  
16 Mr. Unsworth's reputation has been harmed in any  
17 way by anything Mr. Musk said about Mr. Unsworth?

18 MR. GRUNBERG: Hold on, let me look at  
19 that before you answer.

20 Objection, form.

21 A. I'm sorry, can I get the question again?

22 BY MR. SCHWARTZ:

23 Q. Sure. Let me read it. Are you giving  
24 any testimony in this case as to the number of  
25 people who think that Mr. Unsworth's reputation



1 has been harmed in any way by anything Mr. Musk  
2 said about Mr. Unsworth?

3 A. I was not asked to investigate that, so  
4 no, as I sit here today I'm not planning on  
5 providing that information.

6 Q. Do you know whether anyone thinks that  
7 Mr. Unsworth's reputation has been harmed in any  
8 way by anything Mr. Musk said about him?

9 MR. GRUNBERG: Objection, form.

10 A. Well, again, I was not asked to  
11 investigate that. But personally I read quite a  
12 few articles, so I have an opinion -- or I have an  
13 impression. But no, I was not asked to  
14 investigate that, so no, I'm not planning on  
15 providing that information.

16 Q. Well, how many people in the world do you  
17 think Mr. Unsworth's reputation has been harmed in  
18 any way by anything Mr. Musk said about  
19 Mr. Unsworth?

20 MR. GRUNBERG: Objection, form.

21 A. I was not asked to investigate that, so I  
22 don't know.

23 BY MR. SCHWARTZ:

24 Q. Now, the -- if you look at your report,  
25 if we go to page 5, paragraph 20.c., you say that

1 the -- just so we have it in front of us,  
2 paragraph c. says, quote, with more than 98  
3 million potential daily unique visitors, close  
4 quote. Do you see that?

5 A. Yes.

6 Q. What do you mean by the word potential?

7 A. The -- well, potential has a definition,  
8 you know, in terms of the -- you know, the  
9 possible number. I include that because I  
10 outline, again in paragraph 22, the conservative  
11 method that I took. So I think what I was meaning  
12 by potential, there are potential 98 million daily  
13 unique visitors, and then, you know, I know I'm  
14 excluding a certain amount of traffic.

15 Q. Okay. Just to be clear, then, in other  
16 words, potential is not some kind of a modifier of  
17 the term that you use throughout your report of  
18 daily unique visitors.

19 A. It's -- I wasn't meaning it in that type  
20 of regard. It's more of the aspect of using a  
21 conservative approach to calculating the 98  
22 million daily unique visitors.

23 Q. Okay. Thank you. Were you asked to do  
24 any work in this case that is not reflected in  
25 your report?



1           A. I believe everything I was asked to do is  
2 reflected in the report, either directly or  
3 indirectly from what I was asked to do.

4           Q. Just to make sure that there was no  
5 ambiguity in my question, to illustrate what I  
6 meant, in other words, there hasn't been any  
7 situation during your work in this case where  
8 Mr. Unsworth's lawyers asked you to do some  
9 additional work or express some additional opinion  
10 on some topic and you said, No, I have to decline.

11          A. Not that I recall, no.

12          Q. Okay. Did you do anything to prepare for  
13 your deposition in this case today?

14          A. Yes.

15          Q. What did you do?

16          A. I reread my entire report. I reread  
17 every reference. I looked over my CV, looked over  
18 all the appendices, and I met with two of the  
19 lawyers yesterday.

20          Q. Which lawyers?

21          A. Jonathan and Nicole.

22          Q. How long did you spend preparing for your  
23 deposition in this case, all in?

24          A. Can I ask a clarifying question?

25          Q. Absolutely.



1           A. So including my time of reviewing  
2 documents and --

3           Q. Yes.

4           A. Probably 10 to 12 hours.

5           Q. 10 to 12 hours, okay. And how long, or  
6 how many of those 10 to 12 hours that you spent  
7 preparing for your deposition in this case did you  
8 spend with Mr. Unsworth's lawyers?

9           A. Four or five hours.

10          Q. So if my math is right, you spent a total  
11 of 10 to 12 hours preparing for your deposition in  
12 this case; is that right?

13          A. Yes. You know, I don't have an exact  
14 number on the top of my head, but it's about 10 to  
15 12 hours as I'm trying to process the numbers,  
16 yes. So about 10 to 12 hours.

17          Q. And of the 10 to 12 hours you spent  
18 preparing for your deposition in this case you  
19 spent four to five of those hours meeting with  
20 Mr. Unsworth's lawyers.

21          A. Yes.

22          Q. Okay. And then you said that you reread  
23 every reference in your report. By every  
24 reference in your report, what do you mean? What  
25 are you referring to there?

1           A. These would be the documents listed in  
2 Appendix C of my report.

3           Q. So Appendix C is Exhibit 135, I believe.  
4 Okay. All right. Got it.

5           Have you reviewed a report written by  
6 Eric Rose in this case?

7           A. No, I have not.

8           Q. Have you had any communications with  
9 Mr. Rose?

10          A. No, I have not.

11          Q. By communications, I mean to include  
12 written, oral or electronic, email, text, anything  
13 like that.

14          A. As far as I know I've never communicated  
15 with Mr. Rose.

16          Q. Okay. Do you know who he is?

17          A. I've heard the name, but to be honest,  
18 that's all I know. I don't know who he is.

19          Q. Do you know if he's expressing any  
20 opinions or testimony in this case?

21          A. That, I do know, yes.

22          Q. Do you know anything about the substance  
23 of his testimony?

24          A. No, I do not.

25          Q. To any extent are your opinions or is



1 your work in this case -- let me start again. To  
2 any extent do the opinions that you express in  
3 this case rely on any work that Mr. Rose has done  
4 in this case?

5 A. I did not rely on anything he's --  
6 Mr. Rose has done. I've never communicated with  
7 him.

8 Q. Okay. My understanding is that you were  
9 retained by Mr. Unsworth's counsel in July of this  
10 year, July 2019. Does that sound right to you?

11 A. That sounds about right.

12 Q. All right.

13 (Defendant's Exhibit 139 marked)

14 BY MR. SCHWARTZ:

15 Q. Okay. Mr. Jansen, we've put before you  
16 Exhibit 139. It's a letter from Jansen Expert  
17 Witnessing, LLC dated July 10, 2019. This appears  
18 to be an agreement between you on the one hand and  
19 the attorneys for Mr. Unsworth on the other hand;  
20 is that right?

21 A. That is right.

22 Q. And this is the agreement pursuant to  
23 which you were retained to work on this case?

24 A. This looks like the retainer agreement,  
25 yes.

1 Q. Is there any other agreement besides the  
2 July 10, 2019 agreement marked as Exhibit 139 for  
3 your work in this case?

4 A. As far as I know this is the only  
5 agreement.

6 Q. Did you perform any work in connection  
7 with this case before July 10, 2019?

8 A. No, I did not.

9 Q. And does the -- or I should say --

10 A. Excuse me, can I modify that statement?

11 Q. If you need to.

12 A. I don't know if it qualifies as work, but  
13 we did have the initial calls back and forth of,  
14 you know, the -- kind of the vetting process that  
15 typically happens in these things. But I did not  
16 perform any analysis or work, anything other than  
17 just phone calls of talking to Jonathan, the  
18 lawyers.

19 Q. Before July 10, 2019.

20 A. Yes, yeah.

21 Q. Okay. So, in other words, the analysis  
22 you undertook that is reflected in your report in  
23 terms of number of articles, websites, daily  
24 unique visitors, you didn't commence any of that  
25 work until on or after July 10th, 2019.



1           A. That's correct.

2           Q. There's a paragraph here titled rates.

3       And does that reflect the entirety of your  
4       compensation arrangement with Mr. Unsworth's  
5       attorneys for your work in this case?

6           A. Yes, that's my hourly rate and expense  
7       reimbursement agreement.

8           Q. I'm sorry.

9           A. Expense reimbursement agreements, yes.

10          Q. Is there any additional compensation you  
11       could be entitled to or be eligible for in  
12       connection with your work in this case?

13          A. Not that I know of.

14          Q. You haven't had any discussions with  
15       anyone about getting any bonus compensation or any  
16       compensation tied to the outcome of the case?

17          A. No.

18          Q. Putting aside the work you did to prepare  
19       for your deposition in this case, let's just put  
20       that aside. Up until that point in time when you  
21       began to prepare for your deposition in this case,  
22       approximately how many hours of your time had you  
23       put into your work?

24          A. Setting aside those, say, 12 hours, 88  
25       hours.

1 Q. And that's a very precise number. Can  
2 you tell me how it is you know that it's 88 hours?

3 A. It's a typical question I get asked, so I  
4 checked to see how many hours I had put in.

5 Q. Right, okay. And so that's approximately  
6 somewhere between 35 and \$36,000 worth of time,  
7 correct?

8 A. It's -- yeah, of time, yes.

9 Q. Right. And then I presume you've had  
10 some expenses that you've asked to be reimbursed  
11 as well.

12 A. That is correct.

13 Q. Approximately how much in expenses have  
14 you asked to be reimbursed for?

15 A. Including the -- prior to the deposition?

16 Q. Yes.

17 A. 3,000.

18 Q. So putting aside the time you put -- let  
19 me start again.

20 So if you put 12 hours of time into  
21 preparing for this deposition, that would be  
22 approximately \$4800 of your time in terms of its  
23 value; is that correct?

24 A. Well, it's going to be about 100 hours,  
25 so -- plus expenses, so --



1 Q. No, no, no. I'm sorry, let me withdraw  
2 the question. I just want to say if you -- you  
3 previously testified in this deposition that you  
4 spent 10 to 12 hours of time preparing for this  
5 deposition, then a moment ago you put it at 12  
6 hours. So let's assume for this next question  
7 it's 12 hours. The dollar value of that time for  
8 purposes of billing it to Mr. Unsworth's counsel  
9 would be \$4800, correct? 12 hours --

10 A. Oh, for just the deposition.

11 Q. Just the deposition.

12 A. Oh, yes, I understand now. Yes, yes.

13 Q. Okay. So putting aside the \$4800 in time  
14 for preparing for your deposition, you've put the  
15 value of the time you've put in this case through  
16 today is approximately \$36,000 plus approximately  
17 \$3,000 in expenses; is that right?

18 A. That's approximately correct.

19 Q. Okay. Can you estimate for me the amount  
20 of time you will put into your work in this case  
21 between today, once the deposition has ended, and  
22 trial, when you take the stand at trial?

23 MR. GRUNBERG: Objection, form.

24 A. I don't know if I could give a precise  
25 number, but I've not been asked to do anything,

1 additional analysis, so it would be preparing for  
2 my testimony at trial would be the only thing. I  
3 don't know what those hours would be.

4 BY MR. SCHWARTZ:

5 Q. As you sit here today can you give me any  
6 estimate for the number of hours you would put in  
7 or will put in to prepare to testify at trial?

8 A. My process is typically the same prep  
9 that I do for depositions. I reread my report,  
10 reread all the references. So it's going to be in  
11 the 10- to 12-hour, at least, estimate.

12 Q. So in other words, once this deposition's  
13 over you anticipate an additional 10 to 12 hours  
14 of your time to review materials to prepare for  
15 testifying at trial.

16 A. Yes, that would be my estimate.

17 Q. Okay.

18 (Defendant's Exhibit 140, Defendant's  
19 Exhibit 141, and Defendant's Exhibit 142 marked)

20 BY MR. SCHWARTZ:

21 Q. All right. So Mr. Jansen, the reporter  
22 has handed you what we've marked as Exhibits 140,  
23 141 and 142. And my understanding, but I want to  
24 give you every opportunity to correct me, is that  
25 these -- that Exhibits 140 and 141 reflect



1 invoices for your work on this case through -- let  
2 me see what I've got -- my understanding was these  
3 were your invoices for your work through October  
4 23, 2019. But maybe I'm wrong. So can you just  
5 explain to me what these invoices reflect in terms  
6 of period of time.

7 A. I -- okay, yes, I can. Invoice dated 1  
8 September is billing through mid July through  
9 August. The invoice dated 1 October is for  
10 billing through the month of September.

11 Q. Okay. And so if you add up the first  
12 invoice number of hours to the second invoice  
13 number of hours, it's approximately 74. I'm  
14 rounding up the hours, 31.88 hours in the first  
15 invoice -- excuse me, the second invoice and 42  
16 hours in the other invoice, that's about 74 hours.  
17 You said 88 hours. Would that be time in October  
18 before you started preparing for your deposition?

19 A. Yeah, it would be whatever is not  
20 reflected in these invoices.

21 Q. Okay. And the invoices that you've  
22 sent -- you've given us, that is for -- well,  
23 Exhibits 140, 141 and 142, these appear to contain  
24 logs, if you will, that show for each day that you  
25 did work on this case the work you did and how

1 much time you spent. Is that what those charts  
2 reflect?

3 A. Yes, that's my mode of operation. I log  
4 whenever I'm working on these cases my start time,  
5 stop time, the general task I was doing during  
6 that particular period, and then provide that to  
7 supporting documentation for my time and billing.

8 Q. Did you perform any work on this case  
9 after you were retained that you didn't reflect or  
10 record on these records, Exhibits 140 and 141 and  
11 142?

12 A. All my time within the time periods for  
13 these invoices have been reflected here.

14 Q. Okay. Are you the only person in your  
15 sort of shop, if you will, that's working on this  
16 case? In other words, is anyone assisting you  
17 with your work on this case?

18 A. Jansen Expert Witnessing is just me.

19 Q. So no one else is helping you with your  
20 work on this case.

21 A. No.

22 Q. All right. So let's look at Exhibit 133,  
23 which is your CV. And let me know when you  
24 have --

25 A. Sorry.



1 Q. Oh, no, it's okay. You can clean up the  
2 mess we've made in front of you before you pull  
3 out Exhibit 133. Let me know when you have that  
4 handy.

5 A. I have Exhibit 133.

6 Q. Okay. Is this your most current  
7 curriculum vitae?

8 A. No.

9 Q. What information do you need to tell me  
10 about that's not on Exhibit 133 that would make it  
11 current?

12 A. Additional publications, some additional  
13 keynote talks, those things -- things that have  
14 happened from when I submitted this CV till the  
15 present.

16 Q. I see. And approximately how many talks,  
17 papers, what have you, are not included here?

18 A. A couple talks and a handful of papers.

19 Q. Putting those aside is there anything you  
20 have done educationally or professionally since  
21 graduating college that is not described in your  
22 CV, Exhibit 133?

23 MR. GRUNBERG: Objection, form.

24 A. Yeah, I graduated college in 1985, so  
25 it's a lot of stuff. But -- so there are details,

1 of course, that are not in here, but I've touched  
2 on all the highlights.

3 BY MR. SCHWARTZ:

4 Q. Okay. Your degrees -- you have three  
5 degrees in computer science; is that right?

6 A. That is right.

7 Q. And you also have a Master's Degree in  
8 international relations, correct?

9 A. Correct.

10 Q. And are you bringing to bear in this case  
11 any expertise or education from -- in the subject  
12 of international relations?

13 A. No.

14 Q. Okay. So the am I correct, then, that  
15 the expertise that you bring to this case is in  
16 the field of computer science?

17 A. The broad field of computer science, yes.

18 Q. You aren't an expert in behavioral  
19 science, right?

20 A. I don't know exactly what you mean by  
21 behavioral science. But my degrees are in  
22 computer science.

23 Q. Do you have any degrees in behavioral  
24 science?

25 A. No.



1 Q. Do you have any degrees or expertise in  
2 psychology?

3 A. I do not have any degrees in psychology.

4 Q. Do you hold yourself out as an expert in  
5 psychology?

6 A. No, I do not.

7 Q. Do you have any degrees in the English  
8 language -- in English language or usage?

9 MR. GRUNBERG: Objection, form.

10 A. I do not have any degrees in the use of  
11 English language, no.

12 BY MR. SCHWARTZ:

13 Q. Do you hold yourself out as an expert in  
14 English language or usage?

15 A. No, I don't.

16 Q. Do you have any degrees in journalism?

17 A. No.

18 Q. Do you hold yourself out as an expert in  
19 the field of journalism?

20 A. I do a lot of work with journalists, so  
21 there are aspects of my job that intersect or  
22 overlap with journalism. But my focus is  
23 primarily on web analytics and dissemination, user  
24 traffic, those type of -- that aspect of on-line  
25 journalism.

1 Q. Do you hold yourself out as having any  
2 expertise in any other aspect of journalism  
3 besides what you just described?

4 A. I have no degrees in journalism. So the  
5 application of my knowledge of computer science  
6 and web analytics in the domain of journalism.

7 Q. Okay. Do you have any expertise in the  
8 field of writing newspaper or -- newspaper  
9 articles or magazine articles?

10 A. Do I have any degrees?

11 Q. Do you have any expertise?

12 A. Other than my high school newspaper, no,  
13 I don't.

14 Q. Okay. Is there any aspect of your work  
15 on your high school newspaper that you're bringing  
16 to bear in the opinions you're expressing in this  
17 case?

18 A. Not that I can see, no.

19 Q. Have you ever worked as a journalist for  
20 any -- let me withdraw the question and asked it  
21 cleanly. Have you ever worked as a journalist?

22 A. No, I have not.

23 Q. Have you ever testified as an expert on  
24 journalism in a case?

25 A. Other than how it applies to web traffic,



1 no, I have not.

2 Q. So, in other words, to the extent  
3 journalism or the field of journalism has touched  
4 on any of your work, it hasn't been with regard to  
5 whether a particular article is well written, not  
6 well written, what its subject matter is.

7 Instead, your expertise has been what was the web  
8 traffic to a particular piece of journalism. Is  
9 that what you're saying?

10 A. Well, your question was kind of compound  
11 there. So the aspect of whether an article is  
12 written to some journalistic standard, you know,  
13 that's not my domain of expertise. In terms of  
14 topical classification of articles and journalist  
15 particular articles, then yes, I've done that as  
16 part of my computer science application.

17 Q. And what do you mean by topical  
18 classification of articles?

19 A. Well, one of the research products I do  
20 is to use web analytics to generate personas that  
21 represent customer segments for different  
22 organizations. One of those organizations are  
23 several -- or some of those organizations are news  
24 channels. So we use an algorithmic approach to  
25 take news articles, automatically topically

1    classify them, and then present them in these  
2    personas so journalists and social media managers  
3    will know what their consumers are interested in.

4            Q.    You said you -- are you the person who  
5    developed the algorithm for making those topical  
6    classifications?

7            A.    It's based on prior work, and then we  
8    modify it for our particular domain of on-line  
9    article classification. I did not develop the  
10   algorithms.

11          Q.    Who did?

12          A.    We use several. One is an algorithm  
13   called LDA. I can't remember the author off the  
14   top -- the researcher off the top of my head. But  
15   it's well known algorithm for topical  
16   classification, widely used today. We've modified  
17   it slightly to work with social media content.

18            Then there's -- you know, we use  
19   structural machine learning -- excuse me,  
20   supervised machine learning. Again, I did not  
21   develop that algorithm. Several researchers have  
22   contributed that algorithmic development. My  
23   research has applied, I apply research. I take  
24   theoretical things that other people have done,  
25   modify them for a particular domain.



1 Q. Did you use either of those tools in this  
2 case?

3 A. No.

4 Q. And by tools, I mean the algorithms,  
5 software applications or other means of using any  
6 of the topical classification algorithms or other  
7 systems you were describing in your prior  
8 testimony. You didn't use those in your work in  
9 this case, did you?

10 A. No, I did not.

11 Q. Okay. You understand the jury in this  
12 case may look at your curriculum vitae in deciding  
13 whether you really are an expert in the areas of  
14 your testimony?

15 MR. GRUNBERG: Objection, form.

16 A. I don't know.

17 BY MR. SCHWARTZ:

18 Q. Do you know that the jury may look at  
19 your curriculum vitae in deciding whether you're  
20 credible and how much weight to give your  
21 testimony?

22 A. I don't know.

23 Q. Okay. You wouldn't want there to be  
24 anything in your curriculum vitae that could  
25 mislead the jury about you in any way, would you?

1 MR. GRUNBERG: Objection, form.

2 A. I don't know what -- I don't know what  
3 you mean.

4 BY MR. SCHWARTZ:

5 Q. Well, you've listed all kinds of  
6 educational or professional papers, other things  
7 you've done. You wouldn't want the jury to get an  
8 impression from that that -- you wouldn't want to  
9 mislead the jury about any of the information that  
10 you've put in your curriculum vitae, would you?

11 MR. GRUNBERG: Objection, form.

12 A. I don't even understand the gist of the  
13 question. This is my vitae that I use for -- to  
14 represent my professional life, so it is what it  
15 is.

16 BY MR. SCHWARTZ:

17 Q. And is it completely accurate?

18 A. As accurate as I can make it, as accurate  
19 as I know it is. Yeah, yes.

20 BY MR. SCHWARTZ:

21 Q. Your resume or your curriculum vitae  
22 doesn't exaggerate anything about you, does it?

23 A. As far as I know it does not.

24 Q. Okay.

25 MR. SCHWARTZ: We've been going for about



1 an hour. Why don't we go off the record and take  
2 a break.

3 THE VIDEOGRAPHER: We're going off the  
4 record. The time is now 11:00 a.m.

5 (Recess)

6 THE VIDEOGRAPHER: We are back on the  
7 record. The time is now 11:10 a.m.

8 BY MR. SCHWARTZ:

9 Q. Mr. Jansen, could you pull Exhibit 134  
10 out, this is Appendix B, testimony in the last  
11 four years.

12 A. Yes.

13 Q. And -- you let me know when you have it.

14 A. Okay. What -- oh, this one?

15 Q. I don't know. It's Exhibit 134. It's  
16 Appendix B.

17 MR. GRUNBERG: This one, testimony --

18 MR. SCHWARTZ: It might be in this pile.  
19 It looks like this, two pages (indicating.)

20 MR. GRUNBERG: Here, you can look at mine  
21 for now. I've marked it 134 with my handwriting.  
22 But we'll take it up --

23 THE WITNESS: Oh, wait, this may be it.  
24 Here it is.

25 BY MR. SCHWARTZ:

1 Q. All right. Mr. Jansen, do you have  
2 Appendix B, Exhibit 134 in front of you?

3 A. Yes.

4 Q. Looking at the column deliverables, some  
5 of them -- some of the cells, if you will, or the  
6 rows for that, say, deposition, report, research,  
7 others use the word testimony. If you wrote  
8 testimony does that mean you showed up at a trial  
9 or a hearing?

10 A. I use testimony for trial or arbitration.

11 Q. The work that you did in the cases that's  
12 reflected on Exhibit 134, did any of that involve  
13 attempting to quantify the dissemination of some  
14 information over the internet?

15 A. Yes.

16 Q. Okay. Can you tell me which of those  
17 cases did.

18 A. Yes.

19 Q. Okay. Touché.

20 MR. GRUNBERG: He's good.

21 A. I'll just do the cases here. The one  
22 originally styled Jeffrey Epstein, then down to  
23 line 3, Jane Doe versus Transocean Offshore  
24 Drilling, then line 4, Virginia Giuffre and  
25 Maxwell, and then the last one, Andrews v.



1 Marriott.

2 BY MR. SCHWARTZ:

3 Q. And in the four cases on Exhibit 134 in  
4 which your work involved quantifying the  
5 dissemination of information, did you use  
6 SimilarWeb -- information from SimilarWeb  
7 regarding the number of daily unique visitors to  
8 websites?

9 A. In some of the cases, yes.

10 Q. Which ones?

11 A. The Jeffrey Epstein case, the Virginia  
12 Giuffre case. Those two cases.

13 Q. In the Jane Doe v. Transocean case, where  
14 did you get your numbers for website traffic, if  
15 not from SimilarWeb?

16 A. That particular case did not require me  
17 to use SimilarWeb, but it did involve the  
18 dissemination of information or potential  
19 dissemination of information, but I did not need  
20 to come up with a quantifiable number in that  
21 particular case. I just needed to quantify the  
22 risk of if something got out.

23 Q. Okay. And then the Andrews v. Westin  
24 Hotel Partners, et al, case, you said you did not  
25 use -- did that case -- start again. In that case

1 were you asked to opine on the number of persons  
2 who -- or the number of visitors to any websites?

3 A. In -- yes, I did. But it was not the  
4 entire opinion that I offered.

5 Q. Okay. In order to calculate the number  
6 of potential visitors to websites, if you didn't  
7 use SimilarWeb how did you come up with that  
8 information?

9 A. The main gist of that particular case was  
10 looking at a video, she had been -- it sounds like  
11 you're familiar with the case. But there was  
12 some -- my approach in that is I also outlined  
13 where my number was conservative, and so there  
14 were a variety of pornographic websites that I was  
15 able to get traffic data from that I did not need  
16 SimilarWeb for because they self-reported it.

17 Q. Got it. Okay. Thank you. Have you ever  
18 been retained in a case in which you prepared a  
19 report but were not called on to testify at the  
20 trial or hearing in which a trial or hearing  
21 occurred, of course?

22 A. If I understand the question correct, no.

23 Q. Just so -- my phrase might have been bad.

24 MR. GRUNBERG: By the way, objection.  
25 Just to help you clean it up, there could have



1 been a hearing on something that had nothing to do  
2 with him.

3 MR. SCHWARTZ: Yes. All right. So  
4 that's why I'm going to clean this up.

5 BY MR. SCHWARTZ:

6 Q. So when you said before that the word  
7 testimony appears on Exhibit 134 to indicate where  
8 you testified at a trial or an arbitration, I  
9 think, at least I understood from that, that you  
10 understand that when an arbitration matter is  
11 finally called to what people think of as a trial,  
12 they actually call it a hearing. Is that what you  
13 meant?

14 A. I did not know that, no.

15 Q. Okay.

16 A. I did not take the question like that.

17 Q. Then let's just move on.

18 Have you done any work for the law firm  
19 or law firms that have hired you for  
20 Mr. Unsworth's case? In other words, is this the  
21 first time you've done any work for the Lin Wood  
22 Law Firm?

23 A. Yes.

24 Q. Have you performed any expert work for  
25 the Quinn Emanuel law firm?

1 A. Yes.

2 Q. Are you still engaged to perform any work  
3 for the Quinn Emanuel law firm?

4 A. No.

5 Q. When did your last engagement end for any  
6 lawyer at the Quinn Emanuel law firm?

7 A. I would have to check the exact date, but  
8 it's five years, just kind of ballparking it. I  
9 can't remember.

10 Q. When was the last time you were retained  
11 by anyone from the Quinn Emanuel law firm?

12 A. The -- I was retained -- let me back up  
13 there. I was retained for a case but nothing has  
14 happened. I was retained last year, but it's kind  
15 of on hold, so I have no interaction with the  
16 lawyer.

17 Q. What makes you say that the matter is on  
18 hold?

19 A. Yeah, when you said Quinn Emanuel I just  
20 thought the one case I had done. But when I had  
21 talked to the lawyer, it's a patent infringement  
22 case and he said they're kind of -- they're  
23 working out what the different experts are going  
24 to do. It's a whole body of patent cases, and so  
25 I've been retained but have not performed any



1 work.

2 Q. I see. Let's mark the next exhibit.

3 (Defendant's Exhibit 143 marked)

4 BY MR. SCHWARTZ:

5 Q. So, Mr. Jansen, Exhibit 143 appears to be  
6 a November 19th, 2018 engagement letter between  
7 you and an attorney at the Quinn Emanuel law firm  
8 for a lawsuit titled BlackBerry Limited et al. v  
9 Facebook; is that correct?

10 A. Yes.

11 MR. GRUNBERG: You guys do a good job of  
12 finding good experts.

13 (Defendant's Exhibit 144 marked)

14 BY MR. SCHWARTZ:

15 Q. And Mr. Jansen, Exhibit 144, that's a  
16 true and correct copy of an engagement letter  
17 between you and an attorney at Quinn Emanuel in a  
18 case titled BlackBerry v Snap, right?

19 A. Yes.

20 Q. And these are patent infringement  
21 lawsuits, that is to say the two cases reflected  
22 on Exhibit 143 and 144?

23 A. Yeah, they're patent -- I kind of viewed  
24 them as the same cases, from my side. But yeah,  
25 the -- yes.

1 Q. Okay.

2 A. I don't know exactly what the question  
3 is, but . . .

4 Q. I'm sorry, you don't --

5 A. I kind of lost the question, I'm sorry.

6 Q. So the question was both the lawsuits  
7 that are -- each of the lawsuits that are -- let  
8 me start again.

9 Is it correct that each of the lawsuits  
10 for which the Quinn Emanuel law firm has hired you  
11 reflected in Exhibits 143 and 144 are patent  
12 infringement lawsuits?

13 A. Yes, from my conversation with the  
14 lawyer, they're patent infringement cases.

15 Q. And if you turn to page 3 of Exhibit 143,  
16 let's look at the paragraph that starts, We have  
17 informed you. And I'll just read aloud the third  
18 sentence. It says, quote, While engaged on this  
19 matter for BlackBerry, you agree to refrain from  
20 serving as an adverse expert or consultant or  
21 otherwise assisting with an engagement adverse to  
22 BlackBerry or Quinn Emanuel Urquhart & Sullivan,  
23 LLP.

24 Do you see that?

25 A. Yes.



1 Q. And the same sentence appears in Exhibit  
2 144, correct?

3 A. Yes, it does.

4 Q. At any point between the dates of  
5 engagement on these two exhibits, Exhibits 144 --  
6 143 and 144, did you terminate your engagement by  
7 the Quinn Emanuel law firm?

8 A. I did not. I -- actually, to be honest,  
9 I haven't really done anything in this case so I  
10 didn't even realize that it was -- yeah. I did  
11 not terminate.

12 Q. To your knowledge did anyone at Quinn  
13 Emanuel law firm or its client terminate your  
14 engagement?

15 A. No.

16 Q. So as far as you know, these engagements  
17 are still in effect, correct? These engagements,  
18 Exhibit 143 and 144?

19 A. They have not been terminated as far as I  
20 know.

21 Q. And therefore to your knowledge they're  
22 still in effect as of today.

23 A. Yes.

24 Q. Do you realize as you sit here now, you  
25 have, in fact, taken on engagements that are

1     adverse, as those terms are used in this -- these  
2     engagement letters?

3             A. I don't know if I would take it like  
4     that. But nothing has happened on these  
5     particular cases. They're not even top on my mind  
6     that I'm still engaged.

7             Q. Well, did you understand when you signed  
8     your engagement letters in Exhibits 143 and 144  
9     that while those engagements were underway that  
10    you would not work on matters where Quinn Emanuel  
11    represented the adverse party; that is to say,  
12    that's what was meant by -- that you would refrain  
13    from serving as an expert, adverse expert or  
14    consultant or otherwise assisting with an  
15    engagement adverse to Quinn Emanuel?

16            MR. GRUNBERG: Objection to the extent be  
17    it calls for the witness to make a legal  
18    conclusion.

19            MR. SCHWARTZ: I'm only asking for your  
20    understanding.

21            A. Well, I -- when I have dealt with this  
22    particular type of thing before, the understanding  
23    is that as long as it's not in the same area,  
24    involves the same clients, then, you know, there  
25    is no conflict.



1 BY MR. SCHWARTZ:

2 Q. At any time before today did you discuss  
3 that with anyone at the Quinn Emanuel law firm?

4 A. No, I did not.

5 Q. Have you disclosed to lawyers for  
6 Mr. Unsworth that you have signed the engagement  
7 letters for the two cases that are reflected in  
8 Exhibits 143 and 144?

9 A. I don't believe so.

10 Q. Have you told Mr. Unsworth's lawyers  
11 before today that those engagement letters contain  
12 provisions in which you agreed to during those  
13 engagements, quote, refrain from serving as an  
14 adverse expert or consultant or otherwise  
15 assisting an engagement adverse to Quinn Emanuel?

16 A. As I said, that would not be my even  
17 understanding of the statement, but no, I did not.

18 Q. Who chose what methods you used to do the  
19 research and other work contained in your report?

20 A. Well, I implemented the methods and chose  
21 the methods based on what I was asked to do.

22 Q. Okay. When you're working on a case and  
23 doing the kind of work you did in this case do you  
24 normally take notes or create a lab book or create  
25 any other record of your work as you go forward?

1           A. The -- I typically take screen shots of  
2 my -- whatever documentation, and then typically  
3 for something like this I keep spreadsheets of  
4 calculations and work as I progress through the  
5 assignment.

6           Q. What about notes, whether they're written  
7 or typed in? Do you create any notes when you  
8 work on an engagement of the type that this case  
9 involved?

10          A. No, I don't.

11          Q. And the spreadsheets, that's to assist  
12 you -- those spreadsheets and those screen shots,  
13 those reflect the facts you've learned, the  
14 information you take -- and the information you  
15 take into account in reaching your opinions?

16          A. I'm sorry, could you repeat the question?

17          Q. I'll ask it again. It wasn't a great  
18 question. I withdraw that.

19                You said that you typically take screen  
20 shots of my whatever documentation, and then  
21 typically for something like this I keep  
22 spreadsheets of the calculations and work as I  
23 progress through the assignment.

24                And I just want to follow up and say, Is  
25 that for the purpose of memorializing or gathering



1 the facts you've learned so that you can then take  
2 that information into account when you reach your  
3 opinions that you put into your report?

4 A. I don't think it's exactly that. I use  
5 the spreadsheet because it's an intermediate step  
6 for the generation of my report where I can do the  
7 calculations, because the document itself is not a  
8 place to do the calculations I need to do.

9 Q. When you say the document itself, you  
10 mean your report itself is not the place where you  
11 do the calculations you need to do to come up with  
12 the information or the opinions in the report. Is  
13 that what you're saying?

14 A. Well, it's not exactly that. It is -- I  
15 use a spreadsheet to generate the tables that are  
16 then placed in the report to -- because that's my  
17 end product.

18 Q. Okay. In connection with your work in  
19 this case did you take any screen shots?

20 A. Yes.

21 Q. Did you create any spreadsheets?

22 A. Yes.

23 Q. Did you take any notes or do anything  
24 else to assist you in preparing your report other  
25 than the screen shots or the spreadsheets?

1           A. The -- like I said, I don't take notes.  
2           The -- the screen shots, the spreadsheets, you  
3           know, there are certainly communications with the  
4           lawyer and things like that that -- in terms of  
5           what my assignment is. But those would be the  
6           main documents that I can recall.

7           Q. Okay. Did any of your -- by the way, the  
8           communications with lawyers, were those done  
9           through email?

10          A. Email.

11          Q. And is there anything in your report that  
12          draws upon or is based upon any information  
13          that -- or communications that you exchanged with  
14          the lawyers in this case?

15          A. In terms of all communications? Because  
16          my initial assignment, of course, was a  
17          communication from the lawyers, the dissemination  
18          of the defaming statements.

19          Q. Right. My question was a little  
20          different. What I was asking is whether there is  
21          anything in your report that draws upon or is  
22          based upon any communications you exchanged with  
23          the lawyers in this case.

24          A. Could you give an example? In terms of  
25          like findings, or what do you mean?



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1 Q. It could be, for example. Maybe you had  
2 an email exchanged with the lawyers in this case  
3 where you said, This is how I'm defining a  
4 defaming statement, or, This is how I'm deciding  
5 whether a story primarily concerns the litigation,  
6 or, This is my initial cut at the number of  
7 websites where information that I found was  
8 hosted, or anything like that.

9 A. No, nothing like that.

10 Q. Okay. Even if it wasn't like that, is  
11 there any instance where you had any  
12 communications with the lawyers in this case where  
13 they provided information to you that you took  
14 into account in your report?

15 A. Not that I can recall.

16 Q. Okay. You said earlier that you created  
17 screen shots during the course of your work on  
18 your report in this case. Is that right?

19 A. That is correct.

20 Q. And what are those screen shots of?

21 A. The screen shots are primarily of the  
22 articles and then my original pass on the traffic  
23 reports.

24 Q. When you say pass on the traffic reports,  
25 what do you mean by that?

1           A. What I mean by that is that SimilarWeb  
2   has a free version and a paid version. I first  
3   calculated them on the free version, and then  
4   got -- paid for access to the API to reach the  
5   traffic calculations.

6           Q. Do the screen shots that you created in  
7   the course of your work in this case include  
8   anything other than screen shots of articles and  
9   screen shots of traffic reports?

10          A. I also included the on-line references  
11   that I referenced in my report. Those are the  
12   only ones I can recall at this time.

13          Q. Do these screen shots still exist  
14   somewhere?

15          A. I provided all of them.

16          Q. To whom?

17          A. To Jonathan prior to this deposition.

18          Q. To counsel for Mr. Unsworth.

19          A. Yes, to counsel, yes.

20          Q. Was that for purposes of responding to  
21   our request that you provide documents that you --  
22   the various categories of documents that we  
23   requested that you produce, was that part of that  
24   process?

25          A. Yes.



1 Q. The spreadsheets that you said you  
2 created during your course of this work, what were  
3 those spreadsheets of?

4 A. The spreadsheets were the links to all  
5 the articles, the title of the article, the date  
6 that the article was published, the domain the  
7 article was published on, also the traffic  
8 numbers, the tables that were placed in the  
9 report. Without looking at the spreadsheets,  
10 those are the ones that I can recall.

11 Q. Okay. And have you provided either  
12 native or printout versions of those spreadsheets  
13 to Mr. Unsworth's counsel to provide to us?

14 A. Yes.

15 MR. GRUNBERG: Bobby, you're aware that  
16 you guys have received that stuff.

17 MR. SCHWARTZ: Yes.

18 MR. GRUNBERG: Just to be clear.

19 MR. SCHWARTZ: Yes. I'm starting at the  
20 root and bringing it forward in time.

21 MR. GRUNBERG: Okay.

22 MR. SCHWARTZ: Thank you.

23 BY MR. SCHWARTZ:

24 Q. Now, by the way, going back earlier to  
25 the engagement letters between you and lawyers at

1 the Quinn Emanuel law firm for the patent cases,  
2 do you have an understanding as you sit here today  
3 as to the scope of expertise you're being asked to  
4 provide in those cases? Or the nature, the type  
5 of expertise?

6 A. It's been so long, I can't remember the  
7 exact conversation, but I would have to go back  
8 and refresh that.

9 Q. Okay. Those are patent infringement  
10 cases, right?

11 A. That is correct.

12 Q. Do you know whether the expertise you're  
13 being asked to provide concerns web traffic  
14 analytics, as opposed to something else?

15 A. Again, the conversations happened so long  
16 ago, I can't remember the discussion about the  
17 patents. I can't answer that question right now.

18 Q. Okay. Now, in the course of your work in  
19 this case did you run searches on the Google  
20 search engine?

21 A. Yes.

22 Q. Approximately how many?

23 A. Five, five to ten, five to a dozen. I  
24 can't remember exactly.

25 Q. Did you use any other search engines



1     besides Google for your work in this case?

2             A.   No, I believe I only used Google.

3             Q.   And the Google searches that you ran,  
4     those were to search for articles that contained  
5     information about Mr. Musk or Mr. Unsworth or both  
6     of them; is that correct?

7             A.   No.

8             Q.   What were the Google searches run?

9             A.   The Google searches were aimed at  
10    articles that contained one or more of the  
11    defaming statements.

12            Q.   Did you save the Google searches that you  
13    ran in order to locate the defaming statements in  
14    this case?

15            A.   I have the starting -- I believe the  
16    starting queries are in my spreadsheet, and then  
17    those were -- the starting query is in there. Of  
18    course, there were some modifications, but those  
19    were the primary queries. I primarily started  
20    with the defaming statements themselves that were  
21    made and then used those as the starting point.

22            Q.   Okay. But by starting query, you mean  
23    the words you typed in at the search entry line on  
24    the Google website.

25            A.   Yes, I entered the defaming statements

1 into the search box on Google.

2 Q. And I didn't mean to confine that to  
3 searches you ran solely using the defaming  
4 statements. I'm saying whatever searches you ran  
5 for your work in this case, when you said the  
6 starting query, you meant the actual words you  
7 used to tell Google what to look for.

8 A. Yes, the original starting query that  
9 I -- yes.

10 Q. I'm sorry. And as I understand your  
11 testimony, you retained a list in some way of the  
12 starting queries that you've used in this case; is  
13 that right?

14 A. Yes, I believe -- without looking at the  
15 spreadsheet, I believe it's on one of the sheets  
16 in the spreadsheet of the queries I used.

17 MR. GRUNBERG: Do you have the  
18 spreadsheet? That might help this along.

19 A. They're based -- sorry.

20 MR. GRUNBERG: Do you have the  
21 spreadsheets? Because that might help him.

22 MR. SCHWARTZ: I may, but I'm going to  
23 follow up and ask you a slightly different  
24 question.

25 BY MR. SCHWARTZ:



1 Q. When Google returned those search  
2 results -- by the way, let me start all over  
3 again. You ran these searches on Google using a  
4 computer that you owned; is that correct?

5 A. That's correct.

6 Q. Is this a computer that you used like a  
7 laptop that you take with you where you go or some  
8 computer or work station at one of the schools you  
9 teach at?

10 A. It's my laptop.

11 Q. Your laptop, okay. So you own a  
12 computer, it has a web browser, the web browser is  
13 connected to the internet, right?

14 A. Yes.

15 Q. Okay. And you, for your work in this  
16 case, navigated to google.com or some other Google  
17 website to conduct searches?

18 A. Yes, I used Google, yes.

19 Q. And then you entered five to ten, maybe  
20 even five to twelve different queries and  
21 generated search results; is that correct?

22 A. Yes, that is correct.

23 Q. Okay. My question in terms of what you  
24 retained is not whether you retained a record of  
25 the queries you used. My question is whether you

1 retained the search results themselves. Did you  
2 do that?

3 A. Oh, the search results themselves, no, I  
4 did not retain the search results themselves, if  
5 you mean the search list.

6 Q. That's what I mean. In other words, when  
7 Google came back to you with its results of each  
8 of the five to twelve searches or however many you  
9 ran in the case, you do not have a record, you did  
10 not retain a record, of what those search results  
11 were, what the list of links that Google gave you  
12 was.

13 MR. GRUNBERG: Objection to form.  
14 Misstates prior testimony.

15 A. The -- I did not keep the search results.  
16 I only kept the article itself that would have  
17 pertained to the article I was looking for.

18 BY MR. SCHWARTZ:

19 Q. In other words, once you went through the  
20 process of looking at articles that Google  
21 returned the links to you for, you kept copies of  
22 the articles that became -- that ended up on your  
23 list of articles in Appendix D, right?

24 A. Yes, the articles and the links, yes.

25 Q. Right. But you did not retain links or



1 electronic or hard copies of articles that the  
2 Google search returned to you that are not on your  
3 list in Appendix D; is that right?

4 A. No.

5 Q. That's not right. You did retain those.

6 A. I did not retain -- I did not retain the  
7 search results list, and I did not -- if the  
8 article did not contain the defaming statements, I  
9 did not retain the article.

10 Q. Okay. So, in other words -- well,  
11 approximately how many articles did Google return  
12 to you in the search results lists for however  
13 many queries you ran on Google looking for the  
14 articles you wanted to find in your work in this  
15 case?

16 A. I didn't keep count. I don't know.

17 Q. Certainly we know it's more than the  
18 final number of articles on Appendix D, correct?  
19 That necessarily --

20 A. Yes, that's fair. Yeah, that's fair.  
21 Because sometimes if, like I said, so many  
22 pertains -- as I said in my report, it still may  
23 pertain to the case itself or the incident but not  
24 contain the defaming statements, so then I didn't  
25 include it.

1           Q. So, in other words, if you were to fire  
2 up your laptop or go take us back to your --  
3 wherever you conduct your research or your work in  
4 this case, you have no way of telling us what  
5 articles Google located for you in response to the  
6 search terms other than the articles that are on  
7 your list in Appendix D.

8           MR. GRUNBERG: Objection, form.

9           A. Well, I don't know exactly why I would do  
10 that, but I mean certainly Google allows you to do  
11 temporal type of analysis where you can set limits  
12 on the results. But I was not investigating, you  
13 know, the Google search engine performance. I was  
14 locating the dissemination of articles containing  
15 these defaming statements.

16          Q. I understand that. But you made a  
17 selection of articles to include from those search  
18 results and articles not to include.

19          A. Yeah, based on whether they contain the  
20 defaming statements or not.

21          Q. Right. And I'm not focusing on your  
22 analysis of whether they did or didn't contain the  
23 defaming statements. However you arrived at it,  
24 you made a choice to include some of the articles  
25 that Google returned in the search -- in response



1 to the searches you ran and not include some of  
2 them.

3 A. Well, yes, in terms of -- I don't know if  
4 I'd actually call it a choice, but I had this  
5 criteria, did they contain the defamatory  
6 statements or not. If the answer was yes, I  
7 retained them.

8 Q. That wasn't the only criteria. You also  
9 said in your report that if the article primarily  
10 concerned the lawsuit you excluded it, right?

11 A. If -- I did not include those in the  
12 count, but I included some of the case articles in  
13 one of the appendices. But I did not include the  
14 case articles specifically.

15 Q. Right. So I'm going to come back to that  
16 in a minute just to understand what your criteria  
17 were. But right now I'm just trying to understand  
18 what record exists of your work with Google at  
19 that stage of this case, and so what I'm  
20 understanding from you is the record that exists  
21 is your spreadsheet that shows the links to the  
22 articles that made it onto your list, the 605  
23 articles; is that right?

24 MR. GRUNBERG: Objection, form.

25 A. Well, those are the articles that contain

1 the defaming statements. And if you're asking  
2 whether I retained the search results listing, no,  
3 I did not retain those.

4 Q. Right. So if somebody wanted to go back  
5 and look at things to get a sense of how many  
6 articles, for example, Google returned from the  
7 various searches you ran, what the total number  
8 was and compare that to the number of articles on  
9 your exhibit Appendix D, at this point you can't  
10 tell me what those numbers are, can you?

11 MR. GRUNBERG: Objection, form.

12 A. I don't want to say it can't be done. I  
13 didn't keep the numbers, so I can't provide the  
14 numbers.

15 BY MR. SCHWARTZ:

16 Q. Okay. You can't give me an estimate of  
17 what that number is, can you? In other words, how  
18 many articles, links, Google returned to you when  
19 you ran the searches you ran in your work in this  
20 case.

21 MR. GRUNBERG: Objection, form.

22 A. As I said, I didn't keep a count, so I  
23 don't have that number.

24 BY MR. SCHWARTZ:

25 Q. Now, in doing your work in this case are



1 you required to follow any rules or standards  
2 issued by any academic or professional  
3 organizations?

4 MR. GRUNBERG: One second. Objection,  
5 form.

6 A. Well, as I explained in my report, there  
7 are industry standard methodologies. I don't know  
8 if there are particular rules to -- for this,  
9 exactly what I'm doing.

10 BY MR. SCHWARTZ:

11 Q. Which industry standards or standard  
12 methodologies did you follow in your work in this  
13 case?

14 A. The -- in terms of methodological  
15 approaches, one is the employment of a traffic  
16 service, SimilarWeb. I then clearly defined what  
17 I was looking for in terms of unique daily  
18 visitors. I tried to limit the particular time  
19 period to the -- to a given period. There are  
20 certainly standard procedures for identifying the  
21 domain, identifying duplicate articles, whether  
22 the articles contain the defaming statements or  
23 not.

24 As I outline in the report, whether the  
25 article contained the defaming statements or not

1 was rather straightforward. Same way whether  
2 the -- a website contained a particular article or  
3 not. And then using -- estimating web traffic  
4 services, using tools like SimilarWeb again is an  
5 industry standard approach for doing something  
6 like this.

7 Q. Okay. How do you know that? Did you  
8 consult with any treatises, guide books, websites  
9 to tell you that the process that you were using  
10 here was consistent with industry standards or  
11 methodologies?

12 A. This is my area. This is what I do. I  
13 do web analytics, I do searches and optimization.  
14 This is my area.

15 Q. I understand it's your area. My question  
16 was different, though. Did you consult with any  
17 guide books, treatises, websites or articles to  
18 confirm that the methodologies you were using in  
19 this case were consistent with those industry  
20 standards and methodologies?

21 A. The -- other than, you know, the approach  
22 for using -- other than the approach of using the  
23 websites I outline in my report and the definition  
24 also, you know, there was no need to consult guide  
25 books. I mean, this is an approach, this is --



1 this is what I do.

2 Q. I understand it's what you do, but let me  
3 give you an example. Is there some recognized  
4 standard or methodology in your industry that  
5 endorses the use of SimilarWeb for web traffic  
6 counts, head counts, visitor accounts?

7 A. Well, it's a de facto industry standard  
8 that to get competitive analysis, and to  
9 understand web traffic to other sites that you  
10 don't own, you know, you have to use some type of  
11 web traffic service.

12 Q. Right. My question is more specific. Is  
13 SimilarWeb recognized as an acceptable and  
14 approved source for web traffic in your field?

15 A. Yes. I think SimilarWeb's the --  
16 probably the best web traffic estimation service  
17 out there. I've used it extensively. I  
18 understand the general layout of the methodology  
19 that it uses. If you -- it's recognized by many  
20 people as the -- giving the best traffic numbers.  
21 So yes.

22 Q. All right. You said also one of the  
23 methodologies that you used that's a standard in  
24 your industry was to eliminate duplicate articles.  
25 Did I hear you correctly?

1 MR. GRUNBERG: Objection, form.

2 A. I don't know for sure.

3 BY MR. SCHWARTZ:

4 Q. So did you do anything to ensure that the  
5 articles on your exhibit D do not contain any  
6 duplicates?

7 A. The process I used was to use the URL,  
8 the link to the article, and if it was the -- the  
9 link was identical, then I considered that a  
10 duplicate and did not include the duplicate URLs.

11 Q. Other than making sure that you haven't  
12 used a duplicate URL, did you do anything to  
13 ensure that none of your articles on Exhibit D are  
14 duplicates?

15 MR. GRUNBERG: And by the way, objection  
16 to form. You may want to be more clear about  
17 that. You understand that there's syndicated  
18 articles and such, so are you talking about a  
19 unique instance by giving publication of issuing  
20 that article, or are you talking about an article  
21 that is then syndicated to another -- to a series  
22 of publications and then made available to a  
23 series of additional people on additional  
24 platforms?

25 MR. SCHWARTZ: Counsel makes a very good



1 point, and let me adopt what he's saying.

2 BY MR. SCHWARTZ:

3 Q. Did you do anything to ensure that none  
4 of the articles on your Exhibit D are copies of  
5 other articles in that they are syndicated  
6 articles, that is to say, articles that are made  
7 available in substantially the same form but not  
8 necessarily the identical form at other websites?

9 A. For the task I was given to look at the  
10 dissemination of these particular articles, I was  
11 focused on the placing of these articles on  
12 websites. So whether the content was 100 percent  
13 overlap, 10 percent overlap, no overlap, as long  
14 as they contained the defaming statements and had  
15 a unique identifier which is the link, the URL,  
16 that is a specific address for a particular  
17 article. So if the URL was different I considered  
18 the article different.

19 Q. Even if the same was -- the content was  
20 100 percent the same as another article on your  
21 list.

22 A. I did not evaluate the content.

23 Q. So the answer is yes?

24 A. -- aspect.

25 Q. So your answer to my question is yes.

1 You would include it or did include it, even if  
2 the content was 100 percent the same as another  
3 article on your list.

4 A. If it was posted on a different website,  
5 yes.

6 Q. Got it. Okay, thanks. Okay.

7 MR. GRUNBERG: By the way, can we go off  
8 the record for one second?

9 THE VIDEOGRAPHER: Going off the record.  
10 The time is now 11:51 a.m.

11 (Recess)

12 THE VIDEOGRAPHER: We are back on the  
13 record. The time is now 11:57 a.m.

14 BY MR. SCHWARTZ:

15 Q. Mr. Jansen, do you have Exhibit C handy?

16 A. Yes.

17 Q. Okay. Does this list all of the  
18 documents you considered in preparing this report  
19 that aren't on Exhibit D?

20 A. Yes, these are the references from my  
21 report.

22 Q. Are there any documents you considered  
23 for your work in this case that are not on  
24 Appendix C and D?

25 MR. GRUNBERG: Objection, form.



1           A. These are the ones I directly referenced.  
2 I don't know exactly your question. I mean, I  
3 have this inherent knowledge of the web. These  
4 are the ones I referenced.

5           MR. GRUNBERG: That's my objection.

6           MR. SCHWARTZ: You clarified. Okay.

7 BY MR. SCHWARTZ:

8           Q. In doing your work in this case was there  
9 any information or were there any documents you  
10 wanted to see but you couldn't?

11          A. Not that I recall.

12          Q. All right. So -- all right. I'm going  
13 to speed this up. All right. Maybe I can't. But  
14 I just want you to kind of walk me through  
15 step-by-step what you did at a big picture level  
16 in this case. At some point you arrived at a list  
17 of approximately 605 articles. Those are the ones  
18 that are on Appendix D, right?

19          A. Yes, 605 articles.

20          Q. And you believe they contained  
21 information that was relevant to your opinions in  
22 this case; is that right?

23          A. Well, my criteria was that the articles  
24 had to contain one or more of the defaming  
25 statements. Yes.

1 Q. And then once you had this list you went  
2 to look to see where these articles had been made  
3 available on the internet; is that right?

4 A. That's the outcome. What I specifically  
5 did was parse out the domain, the website that the  
6 article was posted on.

7 Q. Right. And -- never mind.

8 And then what you did is you determined  
9 that those articles had been made available on a  
10 total of 354 websites?

11 A. That's correct.

12 Q. And then you set out to determine  
13 something you referred to in your report as the  
14 potential daily unique visitors for each of those  
15 354 websites, correct?

16 A. That is correct.

17 Q. And then once you got that data for each  
18 of those websites, you added it up to see what  
19 that number was, right?

20 A. Generally. I mean, I also did some other  
21 things, you know. Like if -- there were some of  
22 the sites that I didn't consider the traffic  
23 number reliable, so I excluded those. There were  
24 some sites where I couldn't get the traffic  
25 numbers. I excluded those in terms of the traffic



1 numbers. So then I -- the traffic numbers include  
2 the sites that -- the sites I did not exclude.

3 Q. Your source for the traffic numbers in  
4 your report is SimilarWeb; is that right?

5 A. That's correct.

6 Q. And so based on information you got from  
7 SimilarWeb, you added up approximately 98 million  
8 potential daily unique visitors.

9 A. That's correct.

10 Q. And if I'm looking -- reading your report  
11 correctly, the data that you pulled from  
12 SimilarWeb was data that SimilarWeb had gathered  
13 during the period May to July 2019.

14 A. No, the traffic numbers are from  
15 September 2018.

16 Q. Let's take a look your report so maybe  
17 you can clarify that for me. It's Exhibit 132.  
18 Go to page 18 -- I'm sorry, page 4, paragraph 18.  
19 You say the unique visitor traffic data is  
20 presented on Appendix E, correct?

21 A. I'm sorry, what --

22 Q. Page 4, paragraph 18.

23 A. Okay. Yes, I see that.

24 Q. And so let's take a look at Appendix E  
25 and turn, I think, to page 141.

1           A.   Okay.

2           Q.   And I think there begins your complete --  
3   well, actually, I don't want to put words in your  
4   mouth.  What is this chart that begins on page 141  
5   of Exhibit E titled SimilarWeb traffic numbers?

6           A.   Yes, this is the daily unique visitors  
7   for each of the domains that I calculated from  
8   traffic data from SimilarWeb.

9           Q.   If you turn to page 151, are these --  
10   well, are these the 354 websites that you've  
11   included in your report?

12          A.   The -- yeah, yes.

13          Q.   Okay.  So the total number -- maybe it  
14   isn't -- but there's a number at the top of page  
15   151 of 38,378,969.  Is that the total of the daily  
16   unique visitors on these --

17          A.   No, that's a typo, yeah.  Should be 98  
18   million.

19          Q.   Ah, okay.  Thank you.

20          A.   Yeah.

21          Q.   So did you use -- I'm just wondering  
22   about the typo.

23          A.   No, no, it's -- yeah, that's a typo.

24          Q.   This is not -- by "this," I mean the  
25   chart on pages 141 and 151, that's not something



1 that either Word or Excel added up for you on page  
2 151?

3 A. Yeah, no, this is -- I don't know where  
4 the error came from, but --

5 Q. All right.

6 A. I can correct that.

7 Q. Okay. And then is there something in  
8 either the main body of your report or one of the  
9 appendices that tells us that the SimilarWeb data  
10 you were using for the daily unique visitors or  
11 potential daily unique visitors was generated by  
12 SimilarWeb for the period September 2018 as  
13 opposed to some other date?

14 A. The -- it was a -- the data was  
15 originally included on my spreadsheet, and then I  
16 provided the actual spreadsheet from SimilarWeb  
17 yesterday, because I realized I had not provided  
18 that particular spreadsheet specifically.

19 Q. I see. So is that something you provided  
20 to counsel?

21 A. Yes.

22 Q. Okay. And was that what was uploaded or  
23 sent to us last night or over the weekend?

24 MR. GRUNBERG: It is my understanding the  
25 same exact thing you already have in the

1 spreadsheet. So the spreadsheet that you have  
2 from him contains that spreadsheet.

3 BY MR. SCHWARTZ:

4 Q. So let me back up, then, for a second.  
5 What I'm looking for is is there somewhere in your  
6 report that you can direct us to that tells us  
7 that the SimilarWeb data that you relied on was  
8 data that SimilarWeb was reporting for the period  
9 of September 2018 as opposed to any other period  
10 of time?

11 A. Without going through the report I can't  
12 remember -- I can't recall if I specifically  
13 stated that. But it is in the spreadsheets  
14 provided.

15 Q. All right.

16 (Defendant's Exhibit 145 marked)

17 MR. GRUNBERG: Let's go off the record  
18 for a second.

19 MR. SCHWARTZ: Let's go off the record.

20 THE VIDEOGRAPHER: Going off the record.

21 The time is now 12:07 p.m.

22 (Off-the-record discussion)

23 (Defendant's Exhibit 146 marked)

24 THE VIDEOGRAPHER: We are back on the  
25 record. The time is now 12:23 p.m.



1 BY MR. SCHWARTZ:

2 Q. Okay. Mr. Jansen, when we were off the  
3 record counsel for Mr. Unsworth provided us a page  
4 that we've now marked as Exhibit 146 from -- it's  
5 a portion of one part of one of your spreadsheets.  
6 Can you explain to us what this is and what this  
7 is telling us.

8 A. This particular sheet, yes. This  
9 SimilarWeb has an API, application program  
10 interface, and so I used that particular  
11 interface, I submitted the 354 domain websites to  
12 the application interface, I set the parameters  
13 here for the start month, end month, worldwide,  
14 monthly unique visitors, and it returns the  
15 monthly unique visitors for each of those  
16 websites. I then took that and copied and pasted  
17 it into my spreadsheet to do my calculations.

18 Q. Got it. And did you do that for each --  
19 by "that," I mean the start and end month of  
20 September 2018 for each of the 354 websites you  
21 queried SimilarWeb about?

22 A. Through the API I could see them all  
23 simultaneously.

24 Q. So the answer is yes.

25 A. I didn't do them individually. I did

1     them in bulk, yes.

2           Q.   Okay.  So in bulk the query that you ran  
3     on SimilarWeb of the unique daily visitors for the  
4     websites you were interested in, the 354 websites,  
5     you told SimilarWeb, to use that word loosely, you  
6     were interested in data for September 2018?

7           A.   Yes.

8           Q.   So before that we had marked, I think, as  
9     Exhibit 145 another document from your production.  
10    And it's Jansen 5554 through 58.  Do you have that  
11    in front of you?

12          A.   Yes.

13          Q.   What is -- this pertains to the  
14    foxnews.com website, and is this -- if you look at  
15    the bottom for the URL it tells us that it's  
16    coming from the SimilarWeb software website,  
17    right?

18          A.   That is correct.

19          Q.   And this is from your document production  
20    to counsel, right?

21          A.   I believe this is my document.

22          Q.   So what is -- this says website  
23    performance, it's from August 8th, 2019.  Is that  
24    the date that you were using SimilarWeb for  
25    information about the foxnews.com website?



1           A. What date are you referring to? I'm  
2   sorry.

3           Q. In the upper left corner it says  
4   8/11/2019.

5           A. Yes. Well, that's the date I printed  
6   this particular PDF.

7           Q. So what is this data about foxnews.com  
8   that SimilarWeb gave you?

9           A. Yes, the -- if you -- in addition to  
10   going through the application program interface  
11   you can actually just query a particular domain on  
12   the SimilarWeb web interface itself, and it  
13   provides you this particular report. And I  
14   originally did my calculations using this  
15   particular version of SimilarWeb.

16          Q. Okay. And so -- and then the --

17          A. This is not reflected in my report. This  
18   was just documents that I created during the  
19   process of --

20          Q. Okay.

21          A. -- doing my report. And so in response  
22   to your request for documents I provided  
23   everything I had, and these traffic reports were  
24   inside of those.

25          Q. I see. And so this report looks like the

1 information SimilarWeb was giving you was  
2 information SimilarWeb had gathered for the period  
3 May to July 2019; is that right?

4 A. That is correct.

5 Q. But you're saying that's not -- this  
6 information is not information you put into your  
7 report.

8 A. No, I went to the --

9 Q. Okay.

10 A. -- September 2018.

11 Q. Got it, got it. Thank you for the  
12 clarification.

13 Now, I want to try and understand how  
14 your data might reflect the 98 million potential  
15 unique daily visitors.

16 A. Yes.

17 Q. Might take into account or not take into  
18 account human behavior, if you will. So let me  
19 ask you this as a hypothetical question: If --  
20 well, put it a slightly different way.

21 When you say that 98 million -- there are  
22 roughly 98 million potential daily unique visitors  
23 to the websites you looked at, that doesn't mean  
24 that 98 million different people looked at those  
25 websites, does it?



1           A. For -- it means for each individual  
2 website, those visitors are unique for that  
3 particular period.

4           Q. Right. But it doesn't tell us -- for  
5 example, let's say one of the websites was  
6 newyorktimes.com. And during the period that  
7 SimilarWeb was looking at, September 2018, they  
8 counted as a -- through however their software  
9 works a person as a daily unique visitor to the  
10 newyorktimes.com website. If during that same  
11 period of time that SimilarWeb was looking at web  
12 traffic that person went to another website that's  
13 on your list --

14          A. Uh-huh.

15          Q. -- SimilarWeb would -- and that person  
16 was counted as a daily unique visitor to that  
17 website, that one person would show up, and their  
18 web browsing, would show up as two unique daily  
19 average users on your report, wouldn't they?

20          A. Yeah. That -- the daily unique visitors  
21 are calculated by website, and so there could be  
22 an overlap between the two, which is -- my purpose  
23 of trying to be very conservative in this and  
24 limit -- only doing one particular day of website  
25 traffic, to try and account for that kind of stuff

1 that could happen.

2 Q. Right. So you're an expert on web  
3 traffic. People often visit more than website in  
4 a given day, don't they?

5 A. The -- there are various metrics  
6 depending what people do. On these particular  
7 news sites, yeah, people have certain behavioral  
8 characteristics, and it is possible, of course,  
9 that they could visit two of the 300 -- multiple  
10 sites that are on the list. That can happen.

11 Q. Right. Some people could visit more than  
12 two of the 354 websites on a given day. They  
13 could visit four, five or six.

14 A. Yeah. It's -- if you kind of look at the  
15 stuff on how people browse news, most people are  
16 kind of occasional users. So I'd be really  
17 surprised if they visited that many particular  
18 websites, but it's possible.

19 Q. Did you do anything in your work in this  
20 case to eliminate from your 98 million count  
21 people who visited more than one website in your  
22 354 websites on a particular day?

23 A. As far as I know there's no way to do  
24 that type of overlap, so I took the approach of  
25 trying to be very conservative in the whole



1 calculation of the number itself.

2 Q. Well, okay, let's unpack what you just  
3 said. One, you said there's no way to do that.

4 A. I don't know of a way to identify people  
5 that go to -- multiple people that go to --  
6 individuals that may have went to more than one of  
7 these particular websites.

8 Q. Or put it a slightly different way, you  
9 were unable in your work in this case to eliminate  
10 from your 98 million count people who visited more  
11 than one of those websites on the same day, right?

12 A. Well, not exactly, because it could be  
13 zero. There could be nobody that went to any of  
14 the websites. What I'm saying is I don't know of  
15 a data collection method where you can do that to  
16 identify that.

17 Q. Right. But here's what you've told me so  
18 far. People do often visit more than one website  
19 a day.

20 A. I said they can visit more than one  
21 website a day, yes.

22 Q. Do you have any knowledge as you sit here  
23 today the extent to which people who visit  
24 websites of the type you included in your 354  
25 websites visit more than one of those in a day?

1           A. I don't have the number as I sit here.

2           Q. So there very well may be people who  
3 visited more than one of those websites in one day  
4 and SimilarWeb counted those, each visit, as a  
5 separate visit in your 98 million, right?

6           A. Based on the way you're asking it, it  
7 could be zero. But yeah, it could also -- could  
8 occur.

9           Q. It may not be zero, it could be zero, it  
10 could be in the thousands or millions. You don't  
11 know it one way or the other, do you?

12          A. I would be shocked if it's that high.  
13 But it can occur.

14          Q. Did you do anything in your work in this  
15 case to ascertain how high that number could be,  
16 that is to say, the double, triple or additional  
17 counting of people in the SimilarWeb data you  
18 relied on?

19          A. As I said, I'd be surprised if it's  
20 double or -- if it's triple or that high. But  
21 what I tried to do or what I did was to take a  
22 very conservative approach because, again, I don't  
23 know the way to calculate that particular overlap.  
24 But I acknowledge that it can occur.

25          Q. Well, why would you characterize what you



1 did as conservative as opposed to aggressive if  
2 you didn't eliminate something that you suspect  
3 may have occurred and inflated your number?

4 MR. GRUNBERG: Objection, form.

5 A. As I outlined in my report, I have 15  
6 different factors where I intentionally -- or I  
7 did not include dissemination of the defaming  
8 statements, including, I'll give you one example,  
9 is that many of these websites posted multiple  
10 articles, okay. I only included one particular  
11 count of the daily unique visitors.

12 Also, most of these articles are still  
13 available on the web, so there could still get  
14 traffic to them. I also didn't include the folks  
15 that could have seen the defaming statements via  
16 just through social media.

17 So I did several approaches, you know, 15  
18 of them, to ensure I came up with a very  
19 conservative number.

20 Q. When you say 15, you're referring to  
21 those subparts of paragraph 22 of your report?

22 A. That is correct.

23 Q. But you told me you didn't undertake  
24 those steps.

25 MR. GRUNBERG: Objection, form, misstates

1 prior testimony.

2 BY MR. SCHWARTZ:

3 Q. So those numbers are not -- that activity  
4 is not included in your 98 million, isn't that  
5 right?

6 MR. GRUNBERG: Objection, form, misstates  
7 prior testimony.

8 A. As I said in my report, I did not  
9 include -- those are reasons that the 98 million  
10 is a conservative number of the dissemination of  
11 defaming statements.

12 BY MR. SCHWARTZ:

13 Q. Okay. Just answer my question. You did  
14 not include in your 98 million any viewers or  
15 visitors that you might have found out about had  
16 you done those steps in paragraph 22 and its  
17 subparts, right? That 98 million doesn't include  
18 that, correct?

19 A. That is correct, the 98 million does not  
20 include those. That's why the 98 million is  
21 conservative, right. And as I explained several  
22 times in my report that I took into account the --  
23 because there may be people that either returned  
24 to a site or, as you bring up, may have visited  
25 multiple sites. So that's why I only included one



1 day of traffic, even though those sites -- you  
2 know, those articles are still available on the  
3 web, and the -- and there are other ways that  
4 those information could have been dissemination  
5 that are not included in the 98 million.

6 Q. I don't understand the last part of your  
7 answer. You said that's why I included only one  
8 day of traffic. If you're measuring daily viewers  
9 then unless you're averaging the daily viewers of  
10 multiple days why would there be any reason to  
11 look at more than one day of traffic if you're  
12 trying to report on a daily basis?

13 A. Well, in terms of dissem -- the purpose  
14 was to report the dissemination of these  
15 particular defaming statements. Those articles  
16 are still up. Those websites are still getting  
17 daily unique visitors to those websites. People  
18 could still be reading those particular websites  
19 right now while we're here.

20 But to keep a conservative estimate,  
21 conservative number, I only used one day of  
22 website traffic.

23 Q. As you sit here today you don't know  
24 whether anybody is reading any of the articles in  
25 your list, do you?

1           A. That was not my assignment. I was to  
2 look at the dissemination of the defaming  
3 statements.

4           Q. So the answer to my question is no, you  
5 don't know whether anybody is reading any of the  
6 articles on your list, do you?

7           A. I didn't investigate that.

8           Q. I know you didn't investigate it. My  
9 question is what you know. So I'm not -- I didn't  
10 ask you whether you investigated. So let me just  
11 ask you to answer my question which was: As you  
12 sit here today, you don't know whether anyone is  
13 reading any of the articles on your Appendix D, do  
14 you?

15          A. I think the question is unrealistic,  
16 because other than if you're sitting over  
17 someone's shoulder, these 98 million, how could  
18 you tell whether they're reading an article?

19          Q. And you don't know that, do you?

20          A. I did not investigate that, so no, I  
21 don't know that.

22          Q. Okay. The -- when I was asking you about  
23 the use of the word conservative, though, I wasn't  
24 talking -- I was talking about your use of the  
25 SimilarWeb data, okay. So let's just focus on you



1 used the SimilarWeb data to arrive at a number of  
2 98 million, correct?

3 A. That's correct.

4 Q. That's the only source of data you have  
5 that gets you to 98 million, correct?

6 A. That is the number I -- SimilarWeb is the  
7 traffic estimation tool I used in my report. So  
8 yes, that's the data I used to generate the 98  
9 million.

10 Q. It's the only source of data that you  
11 used, correct? For 98 million.

12 A. For the traffic data, yes.

13 Q. Yes. So knowing, as you sit here today,  
14 that there may be instances where people went in  
15 September 2018 to more than one of the 354  
16 websites on your list, knowing further that each  
17 of those visits would be counted as a separate  
18 unique daily visitor, what makes you say that your  
19 use of the SimilarWeb data to arrive at 98 million  
20 is conservative?

21 A. Well, again, you know, I presented  
22 several reasons in my report and gave several  
23 examples of the measures I took to ensure that it  
24 was conservative. And that's one avenue. I also  
25 compared it to the Comscore data. Comscore data

1 was much higher for the major websites that I  
2 compared it to.

3 Also, we do have a particular datapoint,  
4 it's only one, but from the BuzzFeed article, the  
5 original article. They do report the number of  
6 views of that particular article. And it matches  
7 almost exactly with the SimilarWeb data for the  
8 daily unique visitors.

9 Q. Okay. So just so we can move on from  
10 this, you don't know the extent to which the  
11 SimilarWeb data you used includes in its 98  
12 million total in your report people who visited  
13 more than one of those websites during the period  
14 SimilarWeb analyzed the data, correct? You don't  
15 know that.

16 A. I don't know a way to calculate that, so  
17 no, I don't know what the overlap is.

18 Q. And so you are assuming that the 98  
19 million, at least in terms of adding up the  
20 SimilarWeb data and knowing whether SimilarWeb is  
21 telling you that the number is 98 million, you're  
22 assuming that nobody, not one single person, went  
23 to more than one of those 354 websites on the same  
24 day that SimilarWeb was measuring the traffic,  
25 aren't you?



1 MR. GRUNBERG: Objection, misstates prior  
2 testimony.

3 A. The -- one of the predictive points you  
4 bring up, I realize that there could be, from a  
5 VIN diagram, an overlap between the visitors.  
6 Given the fact I only did one day of traffic,  
7 given the other factors that I didn't include such  
8 as traffic to multiple articles from the same  
9 site, okay, I think the 98 million is a very  
10 conservative number. But I acknowledge there  
11 could be an overlap. It could be zero.

12 Q. Okay. Wasn't my question, though. My  
13 question is for purposes of using the 98 million  
14 figure, you are assuming that nobody went to more  
15 than one of the 354 websites you looked at on the  
16 same day during the period SimilarWeb was  
17 measuring that traffic, aren't you? Yes or no.

18 MR. GRUNBERG: Hold on one second.  
19 Objection, misstates prior testimony, as well as  
20 misrepresents the report of record.

21 Go ahead.

22 A. The -- in addition to the additional  
23 measure to address the issue you bring up is why I  
24 state that there -- you know, I forget the exact  
25 term I use, 98 million, even though I give the

1 exact number, I don't know the exact number that  
2 is the 98 million count. But I -- I did not  
3 deduplicate across multiple sites, and instead  
4 relied on a conservative estimation of the traffic  
5 count to begin with to take into account those  
6 potential overlap.

7 BY MR. SCHWARTZ:

8 Q. So when you say you did not deduplicate  
9 the overlapping sites, is that another way of  
10 saying yes to the question I asked you, which is:  
11 You're assuming, at least insofar as aggregating,  
12 adding up the SimilarWeb data --

13 A. Yeah.

14 Q. -- that nobody went to more than one  
15 website of the 354 you studied during the period  
16 of time SimilarWeb was analyzing that traffic.

17 MR. GRUNBERG: Objection, misstates prior  
18 testimony, and the expert report.

19 A. The -- I think what you're asking is, you  
20 know, this is not like you're standing over  
21 someone's shoulder counting individual people.  
22 It's 98 million. And yes, it is the traffic, it's  
23 an estimation service. And that's why I presented  
24 98 million and not 98,365,052, because it's --  
25 there is -- there could be some overlap there,



1 there could be none. But I did not include the  
2 overlap -- or did not discount for an overlap  
3 factor in the 98 million.

4 BY MR. SCHWARTZ:

5 Q. Okay. And as you sit here today, you  
6 have no way of knowing what that overlap factor  
7 is. And just so someone reading this transcript  
8 will understand what we're talking about, the  
9 overlap factor is the possibility that somebody  
10 went to visit more than one of the websites on  
11 your 354 listed websites on the same day that  
12 SimilarWeb was studying the traffic that you  
13 relied on to get to 98 million.

14 A. I acknowledge, yes, that could happen.  
15 But I -- yes.

16 Q. Well, not only are you acknowledging that  
17 it could have happened, you don't know how much of  
18 that, the extent to which that could have  
19 happened, do you, or the extent to which it did  
20 happen. As you sit here today you just don't know  
21 one way or the other, correct?

22 A. The -- I did not calculate that. Again,  
23 I don't know any way to calculate that. And so  
24 that's why I took the aspect of coming up with a  
25 very conservative traffic number. I don't know --

1 I did not analyze what the visits to multiple  
2 sites are, so yes, it could be zero, it could be  
3 more.

4 Q. And you just don't know one way or the  
5 other as you sit here today.

6 A. I wouldn't phrase it like that, no.

7 Q. Then give me your best estimate of the  
8 number of overlaps that are found within the 98  
9 million number in your report. And by overlaps, I  
10 mean where a person visited at least -- one person  
11 visited at least -- at least more than one of the  
12 354 websites on the same day that SimilarWeb was  
13 studying that traffic to get to your 98 million.

14 A. As I said, I didn't calculate that so I  
15 cannot give you a number.

16 Q. Okay.

17 MR. GRUNBERG: The food is here, if you  
18 want to --

19 MR. SCHWARTZ: All right. Let's go off  
20 the record.

21 THE VIDEOGRAPHER: Going off the record.  
22 The time is now 12:44 p.m.

23 (Recess)

24 THE VIDEOGRAPHER: We are back on the  
25 record. The time is now 1:16 p.m.



1 BY MR. SCHWARTZ:

2 Q. Good afternoon, Mr. Jansen. When we left  
3 off we were talking about the issue of potential  
4 duplicates or duplicate people being counted  
5 within the SimilarWeb data that you used on to get  
6 to your 98 million number. That's not part of my  
7 question, it was just to reorient us because we've  
8 been off the record for a little while.

9 My question is this: Did you look at any  
10 data to tell you in evaluating the SimilarWeb  
11 information the extent to which they might -- that  
12 data might overcount or overrepresent the number  
13 of daily unique visitors to the websites under  
14 your study?

15 A. What I looked at was the -- of course,  
16 reviewed the methodology that they used to ensure  
17 that they have accurate count, and then looked at  
18 some studies other people had done on the accuracy  
19 of SimilarWeb and then what the impression of  
20 SimilarWeb was in the industry.

21 Q. Does any of that bear on whether the  
22 SimilarWeb data would count as more than one  
23 unique daily visitor someone who visited more than  
24 one of your websites during the same day that  
25 SimilarWeb was looking at it?

1           A. Well, yeah, again, I didn't investigate  
2   that.

3           Q. I'm sorry?

4           A. I didn't investigate that.

5           Q. Okay, that's fine.

6           A. As I state in my report, my purpose was  
7   the dissemination. So I took it from -- they were  
8   posted on that particular website, they had that  
9   particular dissemination. I didn't look at the  
10  overlap.

11          Q. You did not look --

12          A. I didn't look at the overlap.

13          Q. Okay. And then you also said that you  
14   looked at some numerical information concerning  
15   the BuzzFeed story, and I just want to follow up  
16   on that so that the record is clear as to what  
17   we're talking about. By the BuzzFeed story I  
18   think you mean September 4 or early September 2018  
19   story in which BuzzFeed first reported the  
20   accusations that Mr. Musk had made to a BuzzFeed  
21   reporter about Mr. Unsworth. Is that what you  
22   meant by the BuzzFeed article?

23          A. Yes. I was provided some visit counts  
24   directly from BuzzFeed I included in my report.

25          Q. Right. So the BuzzFeed visit count,



1 whatever number it was, that tells us the number  
2 of web browsers that navigated to the page where  
3 BuzzFeed was hosting that article; is that right?

4 A. Yeah, they didn't provide any  
5 documentation on the metrics, and this is always  
6 kind of an issue, but -- so my understanding of  
7 what they reported in the kind of standard  
8 definition of what a visit is, yes, it would be a  
9 browser opening that particular article on the web  
10 site.

11 Q. So that number, whatever the number is  
12 from the BuzzFeed article that we've been  
13 discussing, doesn't tell us how many people  
14 actually read the article, does it?

15 A. As I said earlier, other than standing  
16 over and watching someone read it, I don't know if  
17 there's a number -- way to calculate that. That  
18 is a number that represents the people that opened  
19 that particular article.

20 Q. Right. So it doesn't tell us, whatever  
21 the BuzzFeed number is, BuzzFeed isn't purporting  
22 to tell us the number of people who actually read  
23 the article, correct?

24 A. That's -- as far as -- that, no, that  
25 number is the visits to that particular article.

1 Q. And it doesn't tell us -- the BuzzFeed  
2 number, whatever it is, doesn't tell us the number  
3 of people who read far enough into the article to  
4 learn whatever it was BuzzFeed was reporting that  
5 Mr. Musk was saying about Mr. Unsworth. That  
6 information BuzzFeed doesn't report either, does  
7 it?

8 MR. GRUNBERG: Objection, form.

9 A. The number is -- is a count of the  
10 browsers, the people that have opened that  
11 particular article. There's no -- there was no  
12 number provided about how far they scrolled down  
13 in the article or anything like that.

14 BY MR. SCHWARTZ:

15 Q. Okay. The -- okay.

16 So let's go back to SimilarWeb. For a  
17 visit to a website to be counted as a unique daily  
18 visit in the source you relied on to get to 98  
19 million, that is SimilarWeb, those sites don't --  
20 those visitors, rather, I should say, don't have  
21 to be human beings, do they?

22 A. Well, certainly there are nonhuman beings  
23 on the web that visit websites. But one of the  
24 data collection points from SimilarWeb is their  
25 panel data of 4 million actual people that visit



1 websites. And that's one of the data collection  
2 points that they use to calculate the number of  
3 unique visitors.

4 Q. So walk me through it. Let's pick one of  
5 the -- it doesn't matter which one, but I'm just  
6 going to look at Appendix D to your report which  
7 is Exhibit 136, and you let me know when you have  
8 that.

9 A. Okay.

10 Q. So the first -- let's just go with the  
11 first item here, it's from something called  
12 Onion.com. I don't need to repeat the URL. You  
13 understand which one I'm looking at.

14 A. That is correct, yeah.

15 Q. So whatever number SimilarWeb gave you  
16 for the daily unique visitors to the Onion.com  
17 website, how does SimilarWeb calculate that  
18 number?

19 A. The process they use, and again whether  
20 it's for the Onion domain or any domain, they  
21 have -- their methodology is -- they publish it.  
22 They have four different disparate data sources,  
23 one of which is their panel, and these are people  
24 that have opted in to have their browsing traffic  
25 logged, and so those are actual people. So that's

1 one data collection point.

2 The other data collection point they use  
3 is data from internet service providers that  
4 monitor the traffic.

5 The third data source is publicly  
6 available data, typically probably they don't go  
7 onto it on a website, but probably scraping of  
8 data from search engine result pages.

9 And then the final data source is they  
10 have they say hundreds of thousands of actual  
11 websites that have opted in for their particular  
12 website traffic numbers to be accessible by  
13 SimilarWeb.

14 And SimilarWeb takes all those particular  
15 four data sources, runs it through its machine  
16 learning algorithms, and that's how they generate  
17 the traffic estimation numbers for all the sites.

18 Q. Okay. And data from ISPs, let's go  
19 through these. The data from ISPs -- ISPs are  
20 internet service providers, correct?

21 A. That's correct.

22 Q. Does that data include data from only  
23 humans or humans as well as whether it's computers  
24 or bots or other nonhuman web activity?

25 A. Yeah, good question. I can't -- I don't



1 know their particular algorithm at that detail.

2 Q. Okay. And then the third source was  
3 public data, you said it might be scraping from  
4 search engine results or whatnot. Can you tell us  
5 whether that data includes or excludes web  
6 activity resulting from nonhuman sources such as  
7 bots or programs?

8 A. For that particular data I wouldn't  
9 really see bots as playing a role, because it's  
10 typically would be -- they would scrape like  
11 results from Google or Bing, and they typically do  
12 that because SimilarWeb not only provides traffic  
13 services but also advertising or marketing advice  
14 in terms of search engine optimization. So for  
15 that particular data I don't think bots would  
16 really play much of a role.

17 Q. As you sit here today can you tell us the  
18 extent to which it might or might not play a role  
19 as a percentage, a fraction, some other  
20 quantification?

21 A. Well, you know, again, from the whole  
22 technique I would say it would be zero.

23 Q. Okay.

24 A. Because I just don't see bots playing a  
25 role in that particular data collection point.

1 Q. And then you said there are hundreds of  
2 thousands of sites that have told SimilarWeb  
3 they're willing to share their web traffic  
4 numbers; is that right?

5 A. Yes. Again, from the documentation that  
6 is available, it appears that they give access to  
7 Google Analytics, Adobe Analytics, some of the  
8 website analytics platforms, and then SimilarWeb  
9 can use that to compare their estimations are for  
10 those sites.

11 Q. Did SimilarWeb when you did your work in  
12 this case tell you which of the 357 odd sites you  
13 looked at --

14 A. 54.

15 Q. -- 54 websites you were looking at  
16 receive data from the websites themselves to allow  
17 them to compare it to what their estimations are?

18 A. I didn't get that information.

19 Q. So as you sit here now you can't tell us  
20 whether any of the websites included in your list  
21 share data with SimilarWeb.

22 A. I didn't investigate that, so no.

23 Q. Okay. And let's go to the first one.  
24 You said there are some people who have opted into  
25 allowing SimilarWeb to track their web browsing.



1 Is that what you said?

2 A. I believe so, yes.

3 Q. Okay. How many such people are there?

4 A. If I remember their documentation, it  
5 was -- I can't remember the exact number, but they  
6 provide the number, and it's in the millions of  
7 people. They cover 190 plus countries, so it's  
8 got to be tens of millions of people to get that  
9 level. But I can't recall the number off the top  
10 of my head.

11 Q. Okay. When did you your work in this  
12 case did SimilarWeb tell you which of the websites  
13 you were looking at that they were getting data  
14 from people who had opted into allowing SimilarWeb  
15 or -- to view their browsing to those websites?

16 A. Well, just to explain the technology, no,  
17 they did not. But the methodology would be  
18 applied to every single website, so it's the same  
19 methodology. It's not like that particular data  
20 by itself would be the only data that they would  
21 use. They use data from all four websites and  
22 then their machine learning algorithms come up  
23 with these estimates, because that's one of the  
24 advantages of using this web traffic service is  
25 the methodology is the same across all the

1 websites. So I would be shocked if they would do  
2 any variations. And in their documentation they  
3 present that they apply the same methodology for  
4 all the traffic estimations.

5 Q. You said something about four websites.  
6 I didn't understand, what --

7 A. I'm sorry, four -- the four data  
8 collection processes they use to come up with the  
9 traffic estimations.

10 Q. I hear the words you're saying, but I've  
11 lost the train of thought, so just if we could  
12 back up and you could just explain what you meant.  
13 In other words, just so we have my question in  
14 context.

15 A. Absolutely.

16 Q. My question was: When you pull data from  
17 SimilarWeb about a particular website does  
18 SimilarWeb tell you whether on that particular  
19 website their data includes actual data from  
20 people who have opted in to allow them to -- allow  
21 SimilarWeb to watch their browsing history?

22 A. As far as I know, no.

23 Q. As you sit here now can you tell me which  
24 of the websites on your list of 357 websites  
25 SimilarWeb has actual user data for, whether it



1 was based on people opting in or any other way?

2 A. No, I do not have that information.

3 Q. Do you know whether that's the case in  
4 any of the 357 websites on your list; that is to  
5 say that it's based in whole or in part by actual  
6 data that SimilarWeb has from web users?

7 A. Again, I didn't investigate that, no, so  
8 I don't have that information.

9 Q. Do you know the algorithm that SimilarWeb  
10 uses to take the four sources of data you've just  
11 described and manipulate them through some  
12 algorithm to arrive at its estimate for daily  
13 unique visitor traffic to a given website?

14 A. That's proprietary. They give a -- the  
15 overview. They refer to machine learning  
16 algorithms. But they don't say specifically what  
17 they use.

18 Q. Okay. Does SimilarWeb state either in  
19 the software or its website or anywhere else that  
20 they are -- in fact, that their average daily  
21 unique visitor counts exclude any visits to the  
22 websites that you may choose to ask them about  
23 from nonhumans?

24 A. Again, I don't recall that exact  
25 statement in any of their presentations, no.

1 Q. Is there something you've been told by  
2 someone at SimilarWeb or read somewhere that tells  
3 you that the SimilarWeb daily user -- unique daily  
4 user counts exclude traffic to the website from  
5 nonhumans?

6 A. I would expect it, that they would  
7 exclude that. I mean, that's why you do these  
8 traffic estimations. And I assume their  
9 algorithms take that into account. But as I'm  
10 sitting here, I can't recall the reference or a  
11 reference to it.

12 Q. Okay. You said that you assume that  
13 SimilarWeb's metrics, including for daily unique  
14 visitors, takes into account that there's a  
15 tremendous amount of traffic on the internet  
16 that's nonhuman generated.

17 A. Sure, absolutely.

18 Q. How do you know it? Can you tell me  
19 anything as you sit here today that tells you that  
20 you know that to be for a fact what they're doing?

21 A. Well, as I said, I don't have the  
22 reference. I can't point to the exact reference.  
23 But the purpose of these traffic estimation tools  
24 is to get the estimation of human traffic. But  
25 again, I don't have the exact reference today.



1 Q. Do you have any reference?

2 A. As I said, I don't have the reference to  
3 it.

4 Q. Okay. Do you agree with me that a  
5 tremendous percentage -- terrible term. Do you  
6 agree with me that there is a substantial  
7 percentage of traffic on the internet that is  
8 nonhuman generated?

9 A. Yes, the bot traffic is a constant issue  
10 when you're trying to estimate actual customers  
11 and visitors.

12 Q. And is it also correct that articles have  
13 been written that estimate that the amount of  
14 traffic on the internet not generated by human  
15 activity could be as much as half of the traffic?

16 A. I don't recall exactly that, but yeah,  
17 it's high. It's in the -- it's high. I don't  
18 recall if it's exactly 50 percent. But depending  
19 on websites and what particular domain you're  
20 looking at, yeah, there's quite a bit of bot  
21 traffic.

22 Q. Okay. What's your best estimate of the  
23 percentage of internet traffic to websites that's  
24 not generated by human activity?

25 A. You know, you're kind of just asking me

1 off the top of my head. But, you know, of I've  
2 seen reports, you know, the 30 percent, 40  
3 percent, you know, a good portion of traffic.  
4 Again, it would kind of depend on the website and  
5 what particular vertical you're looking at.

6 Q. When you say vertical, I don't know what  
7 that means.

8 A. Well, like, you know, on certain  
9 e-commerce sites or, you know, web scraping sites,  
10 search engine sites, some of the -- especially in  
11 the e-commerce domain, that has a higher -- that  
12 has a potential for some higher bot traffic, so  
13 you can come up with a general number, but there's  
14 going to be some variation across verticals.

15 Q. Okay.

16 A. Yeah, yeah.

17 Q. So what's your best estimate of the  
18 percentage of nonhuman traffic on the websites  
19 that you looked at that are in your 357 websites?

20 A. I didn't look at bot traffic to those  
21 particular sites, so I couldn't say for sure.

22 Q. Okay.

23 (Defendant's Exhibit 147 marked)

24 BY MR. SCHWARTZ:

25 Q. Okay, Mr. Jansen, we've put before you as



1 Exhibit 147 an article from The Atlantic from  
2 January 31, 2017 titled The Internet is Mostly  
3 Bots.

4 My first question is have you heard of a  
5 publication called The Atlantic?

6 A. Yes.

7 Q. Do you hold it in reasonable regard as --  
8 they write intelligent, thoughtful,  
9 well-researched articles for the most part?

10 A. They do nice investigative reporting,  
11 yes.

12 Q. Okay. By any chance do you know Adrienne  
13 Lafrance of the Technology Beat out of The  
14 Atlantic?

15 A. No, I do not.

16 Q. Have you ever heard of a web security  
17 firm called Imperva, I-M-P-E-R-V-A?

18 A. No, I don't believe I'm familiar with  
19 them.

20 Q. So let me just read this to you, a  
21 portion of this. It's the third paragraph of the  
22 article and it says, quote, Overall bots, good and  
23 bad, are responsible for 52 percent of web  
24 traffic, according to a new report by the security  
25 firm Imperva, which issues an annual assessment of

1 bot activity on line. The 52 percent stat is  
2 significant because it represents a tip of the  
3 scales since last year's report which found human  
4 activity had overtaken bot activity for the first  
5 time since at least 2012 when Imperva began  
6 tracking bot activity. Now the latest survey  
7 which is based on an analysis of nearly 17 billion  
8 website visits from across 100,000 domains shows  
9 bots are back on top. Not only that, but harmful  
10 bots have the edge over helper bots, which are  
11 responsible for 29 percent and 23 percent of all  
12 web traffic respectively.

13 Do you see that?

14 A. Yes.

15 Q. Do you have any reason to doubt the  
16 information that The Atlantic reported in this  
17 January 31, 2017 from Imperva?

18 A. Well, you know, based on what they  
19 presented here, I mean, they didn't provide the  
20 data or how it's collected. But I -- I have no  
21 reason, specific reason to doubt. But with those  
22 qualifications that how the data was collected and  
23 the data is not available.

24 Q. And once you received the data from  
25 simple web --



1 A. SimilarWeb.

2 Q. SimilarWeb, sorry, let me start again.

3 Once you received the data you used from  
4 SimilarWeb to arrive at your 98 million figure did  
5 you do anything to reduce it on account of a  
6 potential that that may have included --

7 A. No, no.

8 Q. -- may have included nonhuman traffic?

9 A. I did not, and the reason I did not is  
10 because one of the data collection points are  
11 these panel data, and so that -- those are humans,  
12 so you know those are humans. And I -- the -- so  
13 I did not discount for bot traffic to those  
14 particular sites because of that.

15 Q. I see. But you previously testified that  
16 you don't know whether SimilarWeb's numbers for  
17 any of the websites you've included in your report  
18 included data from any of these panels or humans  
19 participating in allowing people to collect their  
20 data, do you?

21 A. No, that's not correct. Because I  
22 explained that these panels are part of the  
23 SimilarWeb's algorithm for calculating the number  
24 of daily unique visitors. So the panel data we  
25 know is human. We know those are not bots. And



1 so -- and your question earlier was do I have this  
2 reference about specifically if SimilarWeb  
3 excludes them. No, I don't have that. I'd kind  
4 of be very surprised if they didn't already do  
5 some calculations, the machine learning algorithm,  
6 to exclude that. So I did not --

7 Q. So if I'm understanding you correctly,  
8 what you're saying is that SimilarWeb gets data  
9 from humans from websites and does something using  
10 its own proprietary algorithm that allows it to  
11 exclude nonhuman activity from any website for  
12 which SimilarWeb gives you data, even if for that  
13 website it doesn't have any human information?

14 A. As I -- that's not what I said. As I  
15 said, if for -- let's go over their data  
16 collection methods again, one of which is the  
17 panel, those are humans. And so there's no bot  
18 traffic there.

19 The other is the web scraping. Again,  
20 not affected by bot traffic.

21 So that leaves the ISP data or the data  
22 reported by individual websites. From setting up  
23 Google Analytics and Adobe Analytics, those  
24 platforms, you typically exclude the bot traffic  
25 from the analytics you report, or at least



1 separate it out.

2 But I don't know the internal workings of  
3 the SimilarWeb algorithm, you know, how that's  
4 done, where it's done.

5 Q. But just so I understand it, though, the  
6 panel part, that's humans, when you say panel  
7 you're referring to human activity that SimilarWeb  
8 monitors.

9 A. Yes.

10 Q. Okay. I believe you told me that you  
11 don't know whether SimilarWeb has any actual human  
12 website visiting numbers for any of the 357  
13 websites you looked at. Am I right so far?

14 A. Well, again, the question is -- the  
15 question doesn't take into account the methodology  
16 that SimilarWeb applies. They don't separate out  
17 in their reporting, you know, particular websites  
18 that only the panel goes to, for example.

19 Q. I think we're saying the same thing. In  
20 other words -- but let's just be really clear.  
21 I'm going to -- we're going to take this all the  
22 way to the end and you're going to get a chance as  
23 we go each step to tell me where this panel data  
24 becomes relevant. I just want to understand what  
25 the panel data is in the first instance, okay. So

1 let me ask the question again.

2 You don't know whether SimilarWeb has any  
3 panel data for any of the 357 websites specific to  
4 those specific -- those websites, do you?

5 A. They don't make that data available as  
6 far as I know.

7 Q. So what you're saying is through some  
8 algorithm that you don't know any details on,  
9 SimilarWeb looks at user data that -- for websites  
10 that it does have panel data on and processes that  
11 in some way that gives it confidence to think that  
12 even if it doesn't have that data for a given  
13 website you're asking it about, it can be somehow  
14 more confident that that represents only human  
15 activity?

16 A. That was too much of a -- I can't follow  
17 that.

18 Q. Well, how does any data from human beings  
19 that SimilarWeb has, not for the websites you're  
20 interested in but for other websites, tell  
21 SimilarWeb that the nonhuman data it's looking at  
22 somehow, or the other data it's looking at,  
23 excludes nonhuman activity?

24 MR. GRUNBERG: Objection, form.

25 A. I don't -- what nonhuman data are you



1 talking about?

2 BY MR. SCHWARTZ:

3 Q. Well, like the public data, the --

4 A. As I already mentioned, the public data,  
5 I don't see bots having any impact on it.

6 Q. Data from ISPs.

7 A. The data from ISPs, I don't know what  
8 ISPs do internally with that particular data,  
9 so . . .

10 Q. And the websites that share their data  
11 with SimilarWeb, you don't know whether that data  
12 includes or excludes bot traffic, do you?

13 A. The specific sites, no, I don't. But I  
14 would -- a typical setup of those particular sites  
15 is you identify bot traffic and try to exclude it  
16 from your actual visitors.

17 Q. You may try to. You have no way of  
18 knowing the success rates for any of those  
19 websites, do you?

20 MR. GRUNBERG: Objection, form.

21 A. SimilarWeb and their documentation say  
22 they have hundreds of thousands of websites. So  
23 yes, I don't know on all the websites.

24 BY MR. SCHWARTZ:

25 Q. You don't know it for any of them, do

1 you? Can you tell me what level of confidence the  
2 owners of the websites that furnish data to  
3 SimilarWeb have succeeded in eliminating bot  
4 traffic from their counts of visitors?

5 A. As I said, I don't even know -- I don't  
6 know the sites that SimilarWeb is using, and  
7 SimilarWeb doesn't make it available. I can tell  
8 you the industry standard approach is you separate  
9 the bot traffic from human traffic. That's what I  
10 can tell you.

11 Q. And can you tell me how the websites that  
12 are furnishing data to SimilarWeb do that?

13 A. As I've said now three times, I don't  
14 know the websites they're using. SimilarWeb  
15 doesn't make that available.

16 Q. Well, even if you don't know the  
17 websites, do you know the processes that these  
18 websites are using to ensure that the data that  
19 they give SimilarWeb excludes nonhuman visits?

20 A. Again, I don't know the particular  
21 websites, and I've already said there are industry  
22 standard approaches, people would use what I  
23 expect them to use. Do I know specifically that  
24 those sites are doing that, no.

25 Q. So as you sit here now --



1 MR. GRUNBERG: Just to be clear, because  
2 I want to make sure he answers your question. Are  
3 you asking him whether he generally understands  
4 what processes websites might use to do this?

5 MR. SCHWARTZ: No.

6 MR. GRUNBERG: Is that the question?

7 MR. SCHWARTZ: No.

8 MR. GRUNBERG: I want to make sure.

9 BY MR. SCHWARTZ:

10 Q. I want to know if you know what processes  
11 these websites actually used, if any, in order to  
12 eliminate nonhuman activity or nonhuman visits  
13 from their visit web counts that SimilarWeb  
14 obtained. Do you know?

15 A. For now the fifth time I'm telling you I  
16 don't know the particular sites but I can tell you  
17 it's the industry standard approaches. I don't  
18 know the specific sites so I obviously don't know  
19 specifically what those sites are doing.

20 Q. And you don't know the extent to which  
21 any of these websites that furnish data to  
22 SimilarWeb have been successful or unsuccessful in  
23 eliminating bot counts from their information they  
24 give to SimilarWeb.

25 A. For now the sixth or seventh time, I

1 don't know the particular sites so obviously I  
2 can't know what those particular sites are doing.

3 Q. I didn't ask you what they were doing. I  
4 asked you -- you can't tell me whether -- the  
5 extent to which any of them are successful or  
6 unsuccessful using any of the industry standard  
7 tools.

8 A. Now the seventh or eighth time, I don't  
9 know the particular sites so I don't know the  
10 particular procedures that those sites might or  
11 mate not be using to separate visitor or bot  
12 traffic.

13 Q. Fine. So can you tell us as you sit here  
14 today how many of the 98 million daily unique  
15 visitors that you included in your count are the  
16 result of nonhuman traffic?

17 A. Again, I did not look at the bot traffic,  
18 so I cannot answer that question sitting here now.

19 Q. If half the internet traffic is bots,  
20 according to the security firm Imperva as  
21 reflected in The Atlantic magazine article from  
22 January 31, 2017 that we were looking at as  
23 Exhibit 147, your \$98 million number if it  
24 includes bot traffic could be a lot higher than  
25 the number of humans.



1 MR. GRUNBERG: Objection, form.

2 A. You know, you're focusing on this bot  
3 traffic when we've already talked about there's --  
4 we know SimilarWeb incorporates nonbot traffic  
5 into their calculations, okay. You're asking a  
6 specific question do I have a reference on  
7 particular bots.

8 You know, you know, the purpose of these  
9 traffic estimation tools is to estimate actual  
10 unique visitors. So I'd be shocked if they're not  
11 doing some method to being able to identify that  
12 particular traffic.

13 BY MR. SCHWARTZ:

14 Q. Did I ask you whether you would be  
15 shocked if they were not doing anything to  
16 identify nonhuman traffic?

17 MR. GRUNBERG: Objection, form. It's  
18 argumentative.

19 A. My purpose is to explain the technology,  
20 okay. That's -- and to explain the process used  
21 in my report. You're asking a question that I  
22 really don't think impacts the unique visitors.  
23 Could there be some bot traffic in there? Yeah,  
24 there could be.

25 BY MR. SCHWARTZ:

1 Q. And -- but you don't know. That was the  
2 only question I asked: You don't know how much  
3 there might be in your \$98 million, do you?

4 MR. GRUNBERG: Objection, asked and  
5 answered.

6 A. If you're asking my opinion, the vast  
7 majority of that traffic is real people. Could  
8 there be some bot traffic in there? Yes, there  
9 probably could.

10 BY MR. SCHWARTZ:

11 Q. Did you do anything other than taking the  
12 SimilarWeb data to determine what that number of  
13 nonhuman traffic would be?

14 MR. GRUNBERG: Objection, asked and  
15 answered.

16 A. Again, I didn't do any bot analysis.

17 BY MR. SCHWARTZ:

18 Q. Okay. All right. Now, the \$98 million  
19 number -- let's start again. The \$98 million  
20 figure -- that tells us --

21 MR. GRUNBERG: Objection.

22 MR. SCHWARTZ: Did I do it again? I'm  
23 sorry.

24 MS. WADE: Are you trying to tell us  
25 something?



1 MR. GRUNBERG: You know, if that's the  
2 offer on the table.

3 BY MR. SCHWARTZ:

4 Q. Let me start again. The 98 million  
5 visitor number, I just want to make sure I  
6 understand what that tells us. That tells us the  
7 number of people in the period of time under study  
8 went to the website, any page on the website,  
9 hosted by those, I believe it is 357 -- 54 --

10 A. 54.

11 Q. -- websites, right?

12 MR. GRUNBERG: Objection, form.

13 A. Could you restate the question.

14 BY MR. SCHWARTZ:

15 Q. Sure. In other words, what you figured  
16 out was that 98 -- potentially 98 million users on  
17 a given day that SimilarWeb looked into went to  
18 the websites that hosted the articles on your  
19 list.

20 A. Yeah, to kind of phrase it more  
21 directly --

22 Q. You'll do a better job, I'm sure.

23 A. -- it is -- that 98 million is a sum of  
24 the daily unique traffic to the -- when you sum up  
25 the daily unique traffic for one day for each of

1 the 354 websites.

2 Q. Right. But it doesn't tell you where on  
3 those websites any of those people went, does it?

4 A. No, it does not.

5 Q. So as you sit here today you can't tell  
6 us where on those 357 websites any of those 98  
7 million people went, can you?

8 A. That's not what I was asked to do, so I  
9 didn't do that. My purpose was to show the  
10 dissemination of those defaming statements, and it  
11 was dissemination to 354 websites.

12 Q. Right. But in trying to understand how  
13 many people the information you were looking at  
14 was dissemination to, you don't know how many  
15 people actually got to the place on those 354  
16 websites where this information was found.

17 MR. GRUNBERG: Objection, asked and  
18 answered.

19 A. A way to look at it is 98 million people  
20 had the potential to see those defaming  
21 statements.

22 BY MR. SCHWARTZ:

23 Q. Because 98 million people went to the  
24 websites where those defaming statements could be  
25 found.



1 A. Where they were posted, yes.

2 Q. Okay. But websites are big things in  
3 many cases, aren't they? Lots of pages, right?

4 A. They can be.

5 Q. Well, one of your websites was Fox News.  
6 Fox News is a pretty substantial websites with  
7 many different pages on it, right?

8 A. Yes, that is a big website.

9 Q. Right. So it's possible that some of the  
10 articles in your Appendix D on some of the 354  
11 sites few people, if anyone, actually went to the  
12 place on those websites where those articles were  
13 found.

14 A. Uh-huh. Again, I just kind of point out  
15 that the -- my purpose was to show the  
16 dissemination of those particular articles and who  
17 could have had the opportunity to see the defaming  
18 statements. Yeah, we don't have down to the  
19 article view other than with the BuzzFeed article,  
20 and, you know, the lead article on that particular  
21 site matches very closely with the daily unique  
22 traffic.

23 MR. SCHWARTZ: I move to strike as  
24 nonresponsive after the yeah. But let's see if I  
25 can follow up. I'll waive my objection for

1 purposes of a followup.

2 MR. GRUNBERG: Well, wait, that's not --

3 MR. SCHWARTZ: Fine. Let's just withdraw  
4 the objection.

5 BY MR. SCHWARTZ:

6 Q. I just want to make sure I got a clean  
7 answer to my question.

8 A. Sure.

9 Q. It's possible that some of the articles  
10 in your Appendix D on some of the 354 sites, few  
11 people, if anyone, actually went to the place on  
12 those websites where those articles were found.  
13 Isn't that true?

14 A. These questions like is it possible.  
15 It's really not a question. Is it possible?  
16 Yeah, it's possible.

17 Q. Okay. You did nothing whatsoever, other  
18 than maybe with BuzzFeed, which we've already  
19 talked about, so let's put BuzzFeed aside. Other  
20 than BuzzFeed you did no work to determine the  
21 number of people who actually went to the places  
22 on these 354 websites where these 605 articles  
23 were found, did you?

24 MR. GRUNBERG: Object to the form.

25 A. Well, again, I will say again that was



1 not my purpose specifically because my purpose --  
2 my assignment was to gauge the dissemination of  
3 these particular defaming statements, so the  
4 people had the potential to see the statements.  
5 The article level views, okay, which even then  
6 is -- yeah, you know -- as far as I know the  
7 article level views is not information that's  
8 available where you can compare systematically  
9 across this number of websites.

10 BY MR. SCHWARTZ:

11 Q. Okay. Putting aside the BuzzFeed article  
12 which we've already talked about -- I'm not trying  
13 to replot ground -- But for all of the other  
14 articles on your list, you don't have any article  
15 level view data, do you?

16 A. As I just said, I don't have article  
17 level view data.

18 Q. And so that someone reading this  
19 transcript will know what we're talking about, in  
20 other words, you don't have any data that tells  
21 you the number of people who actually got to the  
22 place on the 300 -- any one of those 354 websites  
23 at which they could see any of the articles on  
24 your list, right?

25 MR. GRUNBERG: Objection. Now, I'm not

1 the best at counting sometimes, but I think that  
2 might be up to about three or four of asking that  
3 question.

4 Go ahead and answer.

5 A. The -- again, my purpose was to measure  
6 the dissemination. And, again, I did not have  
7 article level data.

8 BY MR. SCHWARTZ:

9 Q. All right. Now, SimilarWeb provides  
10 estimated traffic to websites. It doesn't provide  
11 user traffic estimates for individual articles on  
12 websites; is that right?

13 A. That's correct, yes.

14 Q. Okay. So go back to Exhibit 146, if you  
15 could. It's that one-pager from your files.

16 A. Yes.

17 Q. Is this -- you can't tell just from  
18 looking at Exhibit 146 which website this pertains  
19 to, can you?

20 A. By just looking at this particular --  
21 this is my like access to the API. So the data,  
22 within the visitor engagement category I went to  
23 monthly visitors, and then the rest of the  
24 spreadsheet gives me all the websites and the  
25 traffic.



1 Q. Okay.

2 A. So this is kind of like the parameters of  
3 what I told the API to do.

4 Q. And so the parameters on Exhibit 146 are  
5 what you told the SimilarWeb API to do for all of  
6 the websites you were studying?

7 A. Yes.

8 Q. Under step 3 where it asks you to select  
9 the metrics, do you see that?

10 A. Yes.

11 Q. And the metrics to me look like monthly  
12 as opposed to daily; is that correct?

13 A. Yes. They do a monthly unique visitors,  
14 and then I divided it by -- to get the daily.

15 Q. That was going to be my next question.  
16 You anticipated.

17 A. Yeah.

18 Q. So just so I understand, could you have  
19 queried SimilarWeb as to specific days in  
20 September 2019 -- '18?

21 A. I specifically talked to two SimilarWeb  
22 reps, and they can't do it by individual day  
23 because they do the average for the month and  
24 then -- you know, I confirmed oh, this is what I  
25 want to do to get the daily, and they confirmed

1     yeah, that's how to do it.

2             Q.   In other words, get our monthly data,  
3     divide by some number.  And did you divide by 30  
4     or 31?

5             A.   Whatever September has, it's --

6             Q.   30.

7             A.   -- 30.  And -- nice try.  But whatever  
8     the monthly was, and -- what was I going to say?  
9     Yeah, I lost it there.

10            Q.   Okay.  All right.  Let's look at your  
11    report.  Let's go to page 27.  Actually, before we  
12    do that, all right.  Well, maybe we can do it this  
13    way.  Where was the other exhibit?  Sorry about  
14    this.  It was here.  Ah, no, that's not it.  I'm  
15    looking for the exhibit that has the Fox data on  
16    it.

17            MR. GRUNBERG:  That would probably be 145  
18    or so.

19            THE WITNESS:  145.

20            MR. GRUNBERG:  Yeah, 145.  That memory  
21    kicking in.

22            MR. SCHWARTZ:  Good for you.  It's on the  
23    bottom of the pile.

24    BY MR. SCHWARTZ:

25            Q.   So, now I understand you've clarified



1 something that I didn't know coming into this  
2 deposition, which was the data on Exhibit 145 was  
3 not data that you used in your final report, and  
4 this is from a different period of time.

5 But help me out anyway. So on this it  
6 says that, according to SimilarWeb, the -- it  
7 reports the number of 373 million on the right  
8 side, do you see that?

9 A. Yes.

10 Q. What does that -- what does SimilarWeb  
11 tell us about that?

12 A. That is the monthly visits to that  
13 particular website, okay. So that includes  
14 perhaps Jim Jansen going back three times to that  
15 particular site during that month.

16 Q. Okay. They don't report monthly unique  
17 visitors -- maybe they do, but I don't see that  
18 here. Do you know why that's not there?

19 A. Yes, this was generated from the free  
20 version, and so if you want that type of data  
21 you've got to pay for it. And that's what I did  
22 with the API.

23 Q. Got it. Then let's just move on. We can  
24 shorten some stuff here. Thank you.

25 Now, do you know for any of the articles

1 on your list -- start again.

2 Do you know for any of the articles on  
3 your list where on the websites that they were  
4 available on they were located? In other words,  
5 where on that website, home page, some other page,  
6 any of that information, do you have that?

7 A. Other than for the BuzzFeed documents  
8 provided I don't have a snapshot of the website on  
9 the day the article was posted, no.

10 Q. Okay. I just want to make sure you've  
11 answered my question. I think you have, but just  
12 so we're clear. In other words, you don't --  
13 other than for the BuzzFeed article, you don't  
14 know where on these websites those particular  
15 articles were placed.

16 A. I did not visit the websites on the day  
17 they were posted, so I don't have that  
18 information, no.

19 Q. Even if you didn't visit the websites on  
20 the day they were posted, from any other source do  
21 you know where the articles on your list in  
22 Appendix B other than the BuzzFeed article were  
23 posted on the websites on which they were posted?

24 A. Well, it's -- let me backtrack. Maybe I  
25 misunderstood your question. If you're talking



1 about the interface, you know, I certainly do not  
2 know that because I didn't visit it.

3 If you look at the URL, that will give  
4 you an idea of the structure of where the article  
5 was posted and if it was, for example, posted in  
6 technology or social media or, you know,  
7 international news and things like that. But I  
8 don't have the -- I took your question to mean  
9 the -- not the structure, but the interface  
10 itself.

11 But from the URL you can get some  
12 structural information sometimes. But I didn't  
13 look at that in my analysis.

14 Q. I see. So, in other words, you can't  
15 tell us how, if somebody landed on the home page  
16 of one of the 354 websites in your analysis what a  
17 person would have to do to find the actual article  
18 from that website that's on your list.

19 A. I did not -- yeah, I said I didn't have  
20 the snapshot of the interface for the particular  
21 days those articles were posted, so no, I don't  
22 have that information.

23 Q. You don't have the information I was  
24 asking about, which was how if somebody landed on  
25 the home page of any of those 354 websites in your

1 analysis what a person would have to do to find  
2 the actual article from that website on your list.

3 MR. GRUNBERG: And just so we can make  
4 this easier, are you asking him about this moment  
5 in time or are you asking about the moment, the  
6 day of the article being posted? That might help  
7 get what you're looking for from him.

8 BY MR. SCHWARTZ:

9 Q. I'm not sure that I am, but let me  
10 suggest something maybe I -- what I'm asking you  
11 is this. As you sit here today can you tell us  
12 for the articles on your list what a person would  
13 have to do from the home page of those websites in  
14 order to get to that article?

15 A. Yeah, I can certainly talk generically.

16 Q. No. Let me -- my question wasn't that  
17 clear, then. In other words, the actual effort a  
18 person would have to make in order to find the  
19 article.

20 A. Right. Well, again, generically it could  
21 be right on the splash -- the home page when they  
22 landed, the article's right there. Could be in  
23 one of the subcategories, technology, you know,  
24 investments. Or they could do a search. I think  
25 those would be the three kind of approaches that a



1 person would do.

2 Q. Right. But do you know for each of these  
3 articles? Let's start with -- for each of these  
4 articles, like whether they were on the home page?

5 A. No, I did not.

6 Q. And do you know how much effort a person  
7 would have to undertake if they were at the home  
8 page of these websites in order to get them to the  
9 article on your list?

10 A. It would be one of kind of the three  
11 general approaches that I mentioned, but I don't  
12 know for each individual article.

13 Q. Do you know of any of the articles?

14 A. As I said, I didn't visit the websites  
15 the day they were posted, so I don't know  
16 specifically.

17 Q. All right. So do you know whether if --  
18 as to those articles on your list that were not  
19 posted on the home page of the websites or  
20 website, in other words, it was on some  
21 supplemental or deeper page, the article was  
22 mentioned or linked on the home page?

23 A. The -- as I mentioned, I didn't -- when I  
24 did my analysis I didn't visit the websites the  
25 day they were posted. I do some examples where

1 you can do searches on websites and they -- the  
2 articles show up, that's in my report. But I  
3 don't have for all 605 specific articles.

4 Q. Right. But your testimony is that these  
5 articles were disseminated on 354 websites --

6 A. Yeah.

7 Q. -- and here's some data traffic for  
8 unique viewers to these websites. I'm trying to  
9 figure out if there's any way of knowing just from  
10 the mere fact that they're on the website -- or  
11 not knowing from the mere fact they're on the  
12 website.

13 I'm trying to ask you if somebody just  
14 showed up at the home page of each of these  
15 websites whether they would know that the article  
16 was to be found somewhere on the website or how  
17 much effort they would have to undertake in order  
18 to find it. Sitting here now, that's not the  
19 information you were asked to look at or have,  
20 right?

21 MR. GRUNBERG: Object to the form. There  
22 are a lot of different questions there.

23 A. As I said a couple times, I was not asked  
24 to investigate this. I didn't visit the website.  
25 But these articles are still there, so you can go



1 to the website and if you pull up one article it  
2 will suggest articles for you that, you know, also  
3 contain the defaming statements. You can search  
4 on these websites.

5 You know, the whole Thai cave rescue  
6 thing was a very popular story, and Mr. Musk's  
7 comments, you know, again, very popular. But  
8 again, I don't know specifics on each individual  
9 article.

10 Q. Do you know them for any article?

11 A. Again, I didn't investigate this, so I  
12 don't know.

13 Q. Okay. But if somebody weren't looking --  
14 obviously if somebody wanted to find an article on  
15 Mr. Unsworth or Mr. Musk or what Mr. Musk said  
16 about Mr. Unsworth, one way someone might do that  
17 is to actually go to Google and ask Google to do  
18 the work, the legwork and find those articles,  
19 right?

20 A. Yes.

21 Q. All right. But if somebody wasn't  
22 looking to find information about Mr. Unsworth or  
23 looking to find what Mr. Musk had said about  
24 Mr. Unsworth, they were simply visiting the 354  
25 websites you looked at, I'm trying to understand

1 how someone would know there was an article to be  
2 found somewhere within that website that --

3 A. Yeah.

4 Q. -- had this information in it. And  
5 that's not anything you studied, is it?

6 A. I didn't look at that for the 605  
7 articles. And I would also want to point out that  
8 some of these websites are not news sites but  
9 they're blog posts. So it's not just a single  
10 structure for all 354 websites that are in my  
11 report.

12 Q. Right. As you sit here now, though, you  
13 can't tell me how many of the articles were  
14 available on the front page of the blog or the  
15 website, can you?

16 A. I didn't look at that, no.

17 Q. Okay. So the -- I want to focus on the  
18 word visit, okay, as you've used that term, or  
19 visitors in your report. So when you say like  
20 there was a visitor, I think that means a web  
21 browser landed on or presented to the user of the  
22 browser and drew the webpage from that website's  
23 domain; is that right?

24 MR. GRUNBERG: Objection, form.

25 A. The metric for unique visitors, it does



1 have this aspect of being based off a browser and  
2 a certain IP address. And but they've kind of got  
3 more sophisticated also, and that's why they use  
4 these panel data also to incorporate in their  
5 calculation of these visitors.

6 Q. Right. I guess -- let me ask a different  
7 question, I apologize for the lack of clarity.

8 The 98 million number of unique daily  
9 visitors means that -- let's just assume it's 98  
10 million people, whatever. Or start again. The 98  
11 million figure, what it's telling us is that 98  
12 million web browsers took the user to a page on  
13 that website, right?

14 A. The -- well, the metric is -- as best as  
15 possible they try to associate it with people,  
16 that each unique visitor is a particular person.  
17 But there is this -- but they calculate that  
18 through a component of the browser.

19 Q. Right. Let's forget about bots. I  
20 didn't mean to be treading back into that. I just  
21 want to understand what's going on here.

22 In other words, in order for -- I have  
23 this image in my head of gnomes with little  
24 tallies and they're getting to 98 million. And  
25 each time a browser lands on a webpage hosted by

1 the website, that counts as a visit or a visitor,  
2 right?

3 A. It counts as a visit.

4 Q. Okay. Let's start with that. Whether --  
5 that counts as a visit whether or not the user  
6 navigates any further or interacts any further  
7 with that website, right?

8 A. Could be specific how the calculation is  
9 made. But yes, generally once you go to a website  
10 and the process of called dropping a cookie on the  
11 computer, that counts as a visit.

12 BY MR. SCHWARTZ:

13 Q. Right. So the 98 million doesn't tell us  
14 whether any of those -- what activity those users  
15 engaged in beyond landing on a page on the  
16 website, right?

17 A. Well, this goes back to your earlier  
18 question about accessing articles. No, I didn't  
19 have that information. This is the potential for  
20 dissemination of the defaming statements. So it's  
21 traffic to the website.

22 Q. Right. But it doesn't tell us whether  
23 once the browser arrived at that website there was  
24 any further interaction with the website, does it?

25 A. As I said, we don't go down beyond the



1 site level. So no, it does not.

2 Q. So, in other words, give you an example.

3 Somebody goes to one of the 354 websites or  
4 someone is counted as a visit to one of those 354  
5 websites during the period you studied. They are  
6 immediately confronted by a banner ad that  
7 captures their eye and they click on it and it  
8 opens up a new webpage. That counts as a visit  
9 still to the website, doesn't it? To the first  
10 website?

11 MR. GRUNBERG: Objection.

12 A. Depended what the ad -- where the ad is  
13 at and who's posting the website. But the initial  
14 contact with the website counts as a visit.

15 Q. Right. And if in the initial contact  
16 with the website somewhere on that webpage they  
17 see something that's of interest to them and they  
18 go to something that takes them through to another  
19 website, the metric doesn't subtract that person  
20 out as a visitor from the website you were looking  
21 at. They're still a visitor, aren't they?

22 A. They would be -- generally they would be  
23 calculated as a visitor.

24 Q. Right. So it can be the case that even  
25 if the only interaction that a user had with a

1 website was to land on the website, see an ad of  
2 interest to them and click through to that  
3 website, to that ad, to wherever it takes it, have  
4 no further interaction with the website under  
5 study, it's still a visitor or a visit, right? It  
6 still counts towards the 98 million, right?

7 A. Well, yeah, and -- yes. And websites  
8 want to count that, because especially content  
9 websites. So you go to like a blog post -- you  
10 don't have to take any other action with the  
11 website, for example.

12 Q. To be counted.

13 A. Yeah. Well, you can't -- you could  
14 still -- the website could still accomplish what  
15 it wants by -- the content is there, they saw a  
16 blog post, and they left. But they can still see  
17 it without taking any other particular action on  
18 that website.

19 Q. Right. And somebody who lands on one of  
20 the 354 websites that you studied would still be  
21 counted as a visit or a visitor even if the time  
22 they spent on the website was a second, two  
23 seconds, and they did nothing else but just look  
24 at that home page and then go, I'm bored, or I  
25 have to go eat dinner or whatever else, they'd



1 still count as a visit, wouldn't they?

2 A. I would generally say yes, that those  
3 visits count. They typically have some type of  
4 time limit. But it would generally count as a  
5 visit.

6 Q. What's the minimum amount of time --

7 A. That, I don't know.

8 Q. -- you understand these websites require  
9 a visitor to remain on the website to be counted  
10 as a visitor?

11 A. Yeah, I don't know. But -- an  
12 interaction with a website and once the cookie's  
13 dropped, it's counted as a visit. So once that  
14 happens it's counted as a visit.

15 Q. So unfortunately SimilarWeb doesn't tell  
16 you how many of the daily unique visitors to each  
17 of the 354 websites you looked at spent just the  
18 minimum amount of time on those websites and then  
19 left.

20 A. It doesn't correlate that with the unique  
21 daily visitors, no.

22 Q. Right. So some unknown number of those  
23 people may have spent an insufficient amount of  
24 time on that website to even know that that  
25 website had information about Mr. Unsworth,

1 correct?

2 A. Well, I wouldn't take it that far, but  
3 there is -- there is the possibility that yes, in  
4 that 98 million, yeah, people could have had  
5 minimal interaction with the website.

6 Q. And SimilarWeb --

7 A. It's possible.

8 Q. I'm sorry, SimilarWeb doesn't give you  
9 sufficient information for you to determine the  
10 extent to which that happened, do they?

11 A. The -- not for the unique visitors, no.

12 Q. Okay. What about people who come to a  
13 website and realize they navigated there by  
14 mistake, but a cookie got dropped onto their  
15 browser from the website. SimilarWeb's metrics  
16 will view that person as a daily unique visitor,  
17 right?

18 A. Well, see, now, you start bringing in  
19 SimilarWeb. But then because they have this panel  
20 data, they can do some additional calculations  
21 that maybe just a website owner cannot do. So I  
22 can't comment specifically on, you know, what  
23 SimilarWeb is doing. But in terms of interacting  
24 with a website, you know, through some type of  
25 tagging or something like that, then yes, once the



1 cookies drop it's counted as a visit.

2 Q. Well, does SimilarWeb ask its panel  
3 members or do the people who gather that data for  
4 SimilarWeb ask their panel members when they  
5 report data or when they analyze data to  
6 eliminating visits that occurred by mistake?

7 MR. GRUNBERG: Objection, form.

8 A. I don't know that -- sorry. I don't know  
9 that level of detail on the algorithm.

10 BY MR. SCHWARTZ:

11 Q. And by mistake, I mean either they typed  
12 the wrong URL or they clicked the right link but  
13 it took them to a place they really didn't mean to  
14 go and they just want to hit the go back button  
15 and leave. Do you understand that's what I meant  
16 by mistake?

17 A. Yes.

18 Q. Have you ever navigated to a website that  
19 you didn't intend to go to and click the back  
20 button?

21 A. Yes, I have.

22 Q. Okay. And you don't think you're the  
23 only person in the world to use the internet who's  
24 had that experience.

25 A. I don't think so, but --

1 Q. And as you sit here today you can't tell  
2 us how much or how many of the 98 million users in  
3 your daily unique user count includes users either  
4 who navigated to a website by mistake or they  
5 never really interacted -- they never interacted  
6 with the website beyond, say, clicking on an ad  
7 that took them somewhere else.

8 A. Well, again, I kind of go back to my --  
9 the purpose of my analysis. So my purpose of  
10 analysis was the dissemination of these defaming  
11 statements. So let's say someone, take your  
12 scenario, someone did accidentally go to the  
13 website. They still could have saw the defaming  
14 statements. Maybe it's not the website they  
15 wanted to visit, but they still could have saw the  
16 defaming statements, left, and it's still within  
17 the numbers of my report of people that were  
18 exposed to the defaming statements.

19 Q. And that would depend on whether the page  
20 of the website that they landed on had the  
21 defaming statements on them. As opposed to  
22 being --

23 A. Or it was visible when they landed.

24 Q. Exactly, it was visible on the webpage  
25 when they landed right?



1           A. In the scenario that I just outlined,  
2   yes. If they accidentally went to the website,  
3   saw the defaming statements, even then okay, they  
4   saw the defaming statements, it got counted as a  
5   unique visitor. Will it be actually a valid  
6   count.

7           Q. Right.

8           A. Or people that the defaming statements  
9   were disseminated to.

10          Q. So how many people accidentally navigated  
11   to websites and saw the defaming statements,  
12   realized they got to the website by mistake and  
13   left?

14          A. I did not calculate that number.

15          Q. How many of the people in your 98 million  
16   include people who accidentally wound up at a  
17   website that you were looking at, didn't see the  
18   content and left, or got to the website, clicked  
19   through on an ad or something else without seeing  
20   the content containing the statements you were  
21   studying?

22          A. Yeah, this is similar to the aspect of,  
23   you know, the people that, you know, read the  
24   defaming statements. It's not something I looked  
25   at. I was interested in dissemination of these

1 statements.

2 Q. So the answer is you don't know.

3 A. I don't have that level of data.

4 Q. Okay. So is it the case that it's more  
5 likely that someone will read an article  
6 prominently displayed on the home page of a  
7 website than an article buried deep in the  
8 website? If they're not getting there by a search  
9 engine, for example.

10 A. I don't know specifically in terms of  
11 giving you a quantifiable number. But, you know,  
12 the Pew internet research, they do these type of  
13 publications on behaviors on websites. But I  
14 don't have an exact number.

15 Q. So let's see, on page 26 of your report,  
16 one of the websites you list is cars.com with  
17 about 345,000 unique daily visitors, right?

18 A. Yes.

19 Q. Okay. And that 345,000 number, that's  
20 included in your 98 million total, right?

21 A. Yes.

22 Q. Do you know much about cars.com?

23 A. No, I do not.

24 Q. It's a website where people, generally  
25 the purpose for going to that website is to look



1 to see if they're interested in either buying or  
2 selling a car. Did you know that?

3 A. I said I'm not familiar with the  
4 particular website.

5 Q. I see. How many of the 347 websites  
6 included in your list are you not familiar with?

7 A. Many of the small ones I'm not familiar  
8 with, many of the domain-specific ones I'm not  
9 familiar with.

10 Q. And by -- what are you using to  
11 differentiate ones that are small from ones that  
12 are not small, in your answer?

13 A. Well, you know, typically the web traffic  
14 like, you know, for example this 0nion spelled  
15 with an O, I'm not familiar with, what the first  
16 website mentioned here. I'm not familiar with it.

17 Q. You mean with a zero as opposed to a  
18 capital O?

19 A. Exactly.

20 Q. Are you familiar with a website called  
21 Onion that uses all letters to spell itself out?

22 A. Yes.

23 Q. Okay. Cars.com, as far as you know it's  
24 not a news site, is it?

25 A. I'm not really familiar with this.

1 Q. All right. Let me show you -- let's mark  
2 as an exhibit.

3 (Defendant's Exhibit 148 marked)

4 BY MR. SCHWARTZ:

5 Q. So we put before you as Exhibit 148 a  
6 hard copy printout of the cars.com website from  
7 within the last few days. Do you have that in  
8 front of you?

9 A. Yes.

10 Q. And looking at it do you agree with me  
11 that the principal purpose of this website is to  
12 help people looking to buy or sell a car?

13 A. I'm not familiar with websites, so I  
14 don't know what the purpose of the website is.

15 Q. No, I'm asking you based on looking at  
16 the home page of cars.com that you now have in  
17 front of you, do you agree with me that the main  
18 purpose of this website is to help people who are  
19 looking to buy or sell a car?

20 A. Based on here, it looks like it's buying  
21 and selling cars is -- it's one thing the site  
22 does, yes.

23 Q. Okay. There's lots of things on this  
24 website, right? You can search for reviews, you  
25 can look for used cars, you can look for new cars,



1 right?

2 A. I guess.

3 Q. Well, if you look at the last page where  
4 they tell you some popular searches, new cars for  
5 sale, used cars for sale, do you see that?

6 A. Okay.

7 Q. Right?

8 A. Uh-huh.

9 Q. If -- would anyone visiting the cars.com  
10 website to look to buy or sell a car be likely to  
11 come across the article from cars.com that you  
12 included in your report?

13 MR. GRUNBERG: Objection, form.

14 A. Yeah, I -- as similar to your other  
15 questions about a specific user, I can't answer  
16 what a specific user might or might not do.

17 BY MR. SCHWARTZ:

18 Q. Well, you don't see any link to the  
19 article in your list from cars.com on the home  
20 page of cars.com, do you?

21 A. I haven't looked at the entire page,  
22 but --

23 Q. Take as much time as you need, and you  
24 let me know if you see a link on there to the  
25 article you included on your list from cars.com.

1           A. I can look at this, but, I mean, I don't  
2 know the link to the article and -- and, again,  
3 my -- even if someone came here to this particular  
4 site and the article containing the defaming  
5 statements were posted there, they would have the  
6 opportunity of seeing the defaming statements,  
7 regardless of what originally motivated them to go  
8 to websites. The defaming statements were there.

9           Q. Right. So your testimony isn't that 98  
10 million -- well, your testimony is that a certain  
11 number of people had the opportunity to go to  
12 websites where the defaming statements were found,  
13 right?

14          A. As I've said several times, the --  
15 these -- I was to measure the dissemination of  
16 these defaming statements and they appeared in 354  
17 websites and 605 articles, the daily unique  
18 traffic to those websites was about 98 million.

19          Q. Right. You're an expert on computer  
20 science, you have expertise in websites. Do you  
21 see a link on the home page of cars.com to the  
22 article from cars.com that you included on your  
23 list?

24          A. Based on looking at what you provided me,  
25 no, I don't see that.



1 MR. GRUNBERG: Well, I'm going to stop  
2 this right here, because, look, unless you're  
3 going to take out what this website looked like on  
4 July 18th if you navigated to any of the content  
5 posted on there and show him what the must read  
6 stories on the right-hand margin of the website  
7 showed if you navigate to any of this content and  
8 whether that showed a link to the article about  
9 Musk, this is an inherently unfair and incomplete  
10 and harassing line of questioning.

11 So do you have any representation as of  
12 July 18th with regard to what the must read  
13 stories showed when you navigated to virtually any  
14 content on this website?

15 MR. SCHWARTZ: Can I just ask you to  
16 clarify what year you're talking about, July 18th  
17 2018 or 2019?

18 MR. GRUNBERG: 2018.

19 MR. SCHWARTZ: Okay. I can't tell you  
20 what the cars.com website looked like in July,  
21 but -- 2018. No, I can't represent that to you.

22 MR. GRUNBERG: And then July -- and then  
23 July 2019?

24 MR. SCHWARTZ: This is the only  
25 information I have about the cars.com website, and

1 I believe it is from the last few days.

2 MR. GRUNBERG: And I'm just curious,  
3 you've done June, you've done June 2000 -- it's  
4 really hard to read this. What day are you trying  
5 to represent? June 18, 2019?

6 MR. SCHWARTZ: I take that back. I think  
7 I stand corrected.

8 MR. GRUNBERG: This looks to say June 18,  
9 2019. You aware that the statements that Musk  
10 made in this case were in July of 2018.

11 MR. SCHWARTZ: Yes, I am.

12 MR. GRUNBERG: I'm sorry, July of 2018,  
13 August of 2018 and September of 2018, and not June  
14 of 2019.

15 MR. SCHWARTZ: Well, I know they weren't  
16 in June of 2019, yes, I know.

17 MR. GRUNBERG: Okay. So --

18 MR. SCHWARTZ: I don't know what --

19 MR. GRUNBERG: In addition -- sorry. In  
20 addition to the objections that I previously  
21 stated, I further state that this exhibit that you  
22 put in front of him that I think the suggestion  
23 was was somehow representative of what was going  
24 on when the article that was from cars.com of July  
25 18 was posted -- of 2018 was posted. To the



1 extent you were representing that, that is a  
2 misleading, misrepresentative question based on  
3 this exhibit. My objection is done.

4 MR. SCHWARTZ: Okay, thanks. Is the  
5 witness no longer going to be offering any  
6 testimony about the extent to which any of these  
7 articles are currently available on the internet?

8 MR. GRUNBERG: Or maybe -- is your  
9 article June of 2019? I guess that's the  
10 question -- the witness isn't going to be  
11 testifying to that, but I'm just -- I'm trying to  
12 get clarity on what you're representing here.

13 MR. SCHWARTZ: Yeah. Let me tell you, I  
14 see at the top of the page there is some  
15 information about captures and there's some kind  
16 of date selection that looks like it is set to  
17 June 18th, 2019.

18 MR. GRUNBERG: Yes.

19 MR. SCHWARTZ: What that represents, I  
20 don't know.

21 MR. GRUNBERG: Okay.

22 MR. SCHWARTZ: I just don't know.

23 THE WITNESS: That's --

24 MR. SCHWARTZ: But -- and that's why when  
25 I started out I said my understanding is this is

1 from cars.com in the last few days. That's what I  
2 was told this is. That's the information that I  
3 have. Why that says what it says at the top, I  
4 don't know. Maybe there is a way to go onto  
5 cars.com and tell it to go to a certain date, or  
6 maybe you have to go into the Wayback Machine.  
7 But let me just ask one question, though.

8 At various times in the deposition  
9 Mr. Jansen has said various articles are still  
10 available today.

11 MR. GRUNBERG: Yes.

12 MR. SCHWARTZ: And the objection that you  
13 just made concerned the time, the date on which  
14 this home page was printed. I assume -- you're  
15 not going to exclude him from testifying as to his  
16 knowledge about articles that are available today,  
17 right?

18 MR. GRUNBERG: Oh, no, no, I'm certainly  
19 not, and that's in his report. But I'm just  
20 telling you that to the extent -- so, one, you  
21 represented that this was from the last few days.

22 MR. SCHWARTZ: Yes, that's my  
23 understanding. None of us knows if this is  
24 what's -- if this is or is not from the last few  
25 days.



1 THE WITNESS: I can explain this.

2 MR. SCHWARTZ: Why don't we allow the  
3 witness -- he may know more than we do.

4 THE WITNESS: This is from the Wayback  
5 Machine, internet archive, and this appears to be  
6 a snapshot of at least one of the pages on June  
7 18th, 2019.

8 MR. SCHWARTZ: Okay.

9 MR. GRUNBERG: And so if I -- so just to  
10 finish --

11 MR. SCHWARTZ: Go ahead.

12 MR. GRUNBERG: -- clearly as part of his  
13 report and the testimony that the witness has  
14 given today he has testified to the continuing  
15 existence of the articles in question on the  
16 internet, and clearly we are not going to prevent  
17 him from testifying to that.

18 My concern is just to the extent that  
19 this was represented to be from a few days ago,  
20 this Exhibit 148, that appears not to be the case  
21 to the extent there was some confusion and  
22 someone -- because we know that the 18th of a  
23 month that starts with J is relevant in this case.

24 If someone was confused and did June 18th  
25 and thinking July 18th and thinking 2018 and they

1 were trying to represent that this was somehow  
2 what occurred on the day that Elon Musk was making  
3 his statements defaming Mr. Unsworth, I would just  
4 say that that doesn't represent what the home page  
5 looked like on that day.

6 MR. SCHWARTZ: Got it.

7 MR. GRUNBERG: Would be my understanding.

8 MR. SCHWARTZ: Great.

9 BY MR. SCHWARTZ:

10 Q. So let's clear this up for me too. Let's  
11 assume for purposes of my questions that Exhibit  
12 48 is what the cars.com home page looked like on  
13 June 18th, 2019. Do you agree with me that if  
14 that is correct, there's no link on this page or  
15 any mention on this page, home page, of the  
16 article in your report from cars.com?

17 A. I don't see the mention of the article on  
18 this page.

19 Q. Okay. Okay.

20 MR. SCHWARTZ: Let's mark this as Exhibit  
21 149, please.

22 (Defendant's Exhibit 149 marked)

23 BY MR. SCHWARTZ:

24 Q. Okay. Exhibit 149 is an article from  
25 cars.com dated June 18th, 2019, which might



1 explain why one of my colleagues used the Wayback  
2 Machine to the date they used it to.

3 MR. GRUNBERG: I -- yeah, there you go.

4 MR. SCHWARTZ: So now we know.

5 BY MR. SCHWARTZ:

6 Q. And if -- the article, if you look in the  
7 lower right, has little numbers-8, starting with  
8 page 1. Do you see those on the lower right?

9 A. Yes.

10 Q. Okay. If you go to page 5 of 8, you'll  
11 see it says the following, quote, Things only got  
12 worse on Musk Twitter account when he got into a  
13 heated exchange and called Vernon Unsworth a  
14 British cave diver a quote pedo guy, period close  
15 quote. Do you see that?

16 A. Yes.

17 Q. And does that -- the inclusion of the  
18 word or term pedo guy in here, is that the content  
19 from this article that caused you to include it on  
20 your list?

21 A. There may have been others, but that  
22 would be -- fall within the defaming statements.

23 Q. Okay. So the day this article was  
24 published, if we look at as of the Wayback  
25 Machine, the home page, that would explain why

1 somebody gave me that exhibit to show you, I  
2 guess, because that was the day cars.com published  
3 it. All right. I think the mystery has been  
4 solved and we can move on.

5 MR. GRUNBERG: Do you know which -- just  
6 so we can kind of confirm what we're looking at  
7 here, do you know which of the dates, the time  
8 snapshot this was for Wayback on June 18,  
9 there's --

10 MR. SCHWARTZ: I don't.

11 MR. GRUNBERG: -- at least 12 snapshots  
12 available on way back.

13 MR. SCHWARTZ: I don't.

14 MR. GRUNBERG: Just so we would be able  
15 to authenticate or confirm what it is.

16 THE WITNESS: You may be able to tell by  
17 the URL, the last of -- when they give the URL it  
18 should tell you the snapshot that they used.  
19 Doesn't look like the URL is there.

20 MR. SCHWARTZ: Thank you. Okay. All  
21 right. Okay. All right.

22 BY MR. SCHWARTZ:

23 Q. So another one of the websites you've  
24 included in your unique daily visitor count was  
25 called eurogamer.net on page 27, and that added



1 369,474 unique daily visitors to your count,  
2 correct?

3 A. Which page, please?

4 Q. Page 27, it's about the seventh or so  
5 from the top, eurogamer.net.

6 A. Yes.

7 Q. And that's a website that the focus of  
8 that is video games, correct?

9 A. That would be my guess from the URL.

10 Q. Would an ordinary visitor to a website  
11 that focuses on video games be looking to go to  
12 that site to find news stories on Elon Musk and  
13 whatever he would have had to say about  
14 Mr. Unsworth?

15 MR. GRUNBERG: Objection, form.

16 A. That was not really -- that was not my  
17 focus. My focus was the daily traffic on these  
18 websites. So perhaps someone may not have been  
19 looking for the article, but they went to the  
20 website and then once there they would have the  
21 opportunity to see the defaming statements.

22 BY MR. SCHWARTZ:

23 Q. So if someone who went to the eurogamer  
24 website wanted to see if there was anything on  
25 that website about Mr. Unsworth to find the

1 article that you included in your report, how long  
2 would it take them to find it?

3 A. I did not investigate that.

4 Q. If visitors to the cars.com website  
5 wanted to find the article about Mr. Musk that you  
6 included in your report, how long would it have  
7 taken them to do that?

8 A. I take some objection to the form of the  
9 question, because you can go to the website and  
10 that not be your purpose, but you may go to the  
11 car website, then just look at the news which is  
12 where the article was published, based on the URL,  
13 and just read it based on cars. So it's not like  
14 that was maybe their purpose of going there, but  
15 once there they could have seen it.

16 Q. I understand that once there someone  
17 could have seen it. My question to you is how  
18 long would it have taken a person to find the  
19 article?

20 A. I didn't analyze each particular website.  
21 But looking at that URL it looks like you would  
22 click on the cars, click on the news, and so a  
23 click.

24 Q. Do you know how many other news items on  
25 cars.com on the date this article was published



1 there were?

2 A. As I said several times, I didn't analyze  
3 each website. I didn't have access to the website  
4 interfaces on the days the articles were posted,  
5 so I didn't investigate that.

6 Q. So it follows from that that you can't  
7 tell us whether someone clicked on cars.com then  
8 said, Oh, I want to see news, whether the article  
9 you included in your report would be visible to  
10 them on their screen.

11 A. Once again, I didn't analyze that level  
12 of behavior. It was once they got to the website  
13 they had the opportunity to see the defaming  
14 statements because the defaming statements were  
15 disseminated to that website.

16 Q. I know. But my question was: You can't  
17 tell us whether if someone navigated to the news  
18 page on cars.com they would see the article you  
19 included.

20 A. As I've --

21 MR. GRUNBERG: Objection, asked and  
22 answered.

23 A. -- answered several times, I didn't  
24 analyze the layout of each website on the day the  
25 article was posted.

1 BY MR. SCHWARTZ:

2 Q. Right. All you have to do is say no.

3 You can answer my question. It's a yes or no

4 question, you don't want to give yes or no

5 answers, which is why unfortunately I repeat them

6 or try to get you to focus on the question I

7 asked. I just want to be sure I get answers to my

8 questions --

9 A. Sure.

10 Q. -- because, as I told you before, this is

11 my only opportunity to ask you questions before

12 you take the stand at trial, and I need some

13 cooperation from you to get the information that

14 I'm looking for. Is that fair?

15 MR. GRUNBERG: Objection to the extent

16 that you're insinuating he's not cooperating. He

17 answering the question. He's telling you it's not

18 something that he looked at. That you don't like

19 the answer, you know, is not a reason to sit here

20 and tell this man that he's not cooperating. So I

21 just want to make that clear on the record.

22 But go ahead and please ask your

23 question.

24 MR. SCHWARTZ: Thank you.

25 BY MR. SCHWARTZ:



1 Q. So can you tell us, yes or no, whether if  
2 someone navigated to the cars.com website news  
3 section they would see on their screen without  
4 having to scroll further or navigate further the  
5 article you included in your report?

6 A. I understand you may want a yes/no  
7 question -- or a yes/no answer, but it's really  
8 not a yes/no answer, because multiple people went  
9 to that website. Some may have seen it very  
10 clearly initially, others may have had to scroll,  
11 other people may have had to search. So it's not  
12 just a yes/no that that applies to every  
13 particular visitor to that website. So it's not a  
14 yes/no response to your question.

15 Q. Well, do you know anything about any  
16 visit that anyone made to the cars.com website in  
17 terms of where the article would be seen, what a  
18 user would have to do to navigate to find that  
19 article?

20 A. Since I did not analyze the layout of  
21 articles on these sites the day the articles were  
22 posted, the answer would be no.

23 Q. All right. And so you can't tell me,  
24 then, whether someone -- I'm just following up on  
25 an answer you gave me earlier, which was if

1 somebody went to the news section of cars.com they  
2 would see this article. I want to know if you  
3 actually know that. So that's why I asked you:  
4 Would they see this article on their screen or  
5 would they have to scroll or navigate further to  
6 find it, yes or no?

7 MR. GRUNBERG: Objection, form.

8 A. And my response is you say "they," like  
9 this person. And I'm saying there's multiple  
10 people going to the site. I don't know the  
11 experiences of each of the users that went to the  
12 site. Some may have seen it directly, they may  
13 have got there right when the article was posted.  
14 Others may have had to search, others may have had  
15 to scroll. I can't answer your question as yes or  
16 no for every single visitor that went to that  
17 website.

18 BY MR. SCHWARTZ:

19 Q. Maybe if I state the question differently  
20 it will help. Did cars.com place the link to the  
21 story, to the article that you've included from  
22 cars.com in your report, on the first page visible  
23 to web browsers to the news section?

24 A. I do not know.

25 Q. Okay. Now, the information concerning



1 what Mr. Musk said about Mr. Unsworth is on the  
2 fifth of eight pages in the cars.com article,  
3 correct?

4 A. It's one of the defaming statements, yes.

5 Q. And you have no way of knowing the extent  
6 to which anybody who saw this article opened it  
7 and read it read it far enough -- read far enough  
8 into the article to come across those statements,  
9 do you?

10 A. I need to clarify my methodology is my  
11 method was whether an article contained the  
12 defaming statements or not. I did not look at  
13 individual behavior in that article. So whether  
14 the defaming statements were in the title of the  
15 article or on page 5 or at the last sentence, it  
16 was -- it was did the article contain the defaming  
17 statements.

18 Q. Okay.

19 MR. GRUNBERG: And his report is fairly  
20 long, and it's pretty clear about what he did look  
21 at and what he didn't look at.

22 MR. SCHWARTZ: Okay.

23 MR. GRUNBERG: And, you know, we've done  
24 at least an hour of questions about things he  
25 didn't look at that it's clear as day on his

1 report that he didn't look at these things.

2 So, you know, it's getting to the point  
3 of harassing to sit here and go through all these  
4 things again and again that he's never represented  
5 in his report that he did.

6 You know, you could sit here and ask this  
7 man if he's ever talked to the pope, you know.  
8 It's not going to get us any closer to figuring  
9 out what's going on in this case, when you have  
10 his report right here and it says what he did.

11 MR. SCHWARTZ: Okay.

12 BY MR. SCHWARTZ:

13 Q. You're a scientist, right?

14 A. Computer scientist, yes.

15 Q. And the only data that you want to use in  
16 your work is reliable data, correct?

17 A. You always want to use reliable data,  
18 sure.

19 Q. Did you conduct any sensitivity testing  
20 or any other type of work to validate that the  
21 SimilarWeb data you were receiving was reliable?

22 A. The -- I did not do a sensitivity test,  
23 no.

24 Q. Did you do -- oh, I'm sorry, I cut you  
25 off.



1           A. I -- as I mentioned before, from my own  
2     experience and use in the field, SimilarWeb gives  
3     the most reliable results. I did a comparison to  
4     ensure that the numbers they gave were not overly  
5     optimistic. I looked, I did research to see what  
6     the opinions of others in the field were. I  
7     referenced one of those in my report. I talked to  
8     two different people at SimilarWeb and looked at  
9     their documentation.

10           Their approach is scientific, it's  
11     rigorous. The methods seem very relevant to me.  
12     And so -- and also SimilarWeb is used by many  
13     players in this field. There's billions of  
14     dollars of advertising revenue based on it. So  
15     based on those factors, SimilarWeb was appropriate  
16     for this particular analysis.

17           Q. Right. Did you look for any commentary,  
18     papers, articles, any information regarding the  
19     reliability or accuracy of the SimilarWeb data?

20           A. Well, I do provide one reference in the  
21     paper. Also in the documentation from SimilarWeb,  
22     they -- they don't phrase it in terms of  
23     reliability, but they phrase it in terms of that,  
24     you know, the -- comparing the numbers that they  
25     generate to what you may get from a particular

1 website, that there may be a difference based on a  
2 variety of factors. But I provided one reference,  
3 there's one did analysis of the accuracy of  
4 SimilarWeb compared to what they did in house.

5 Q. That was Screaming Frog?

6 A. Yes.

7 Q. Okay. We'll come to that shortly. You  
8 also mentioned in your -- one of your earlier  
9 answers that you reviewed some information from a  
10 company called Comscore; is that right?

11 A. Yes.

12 Q. And does Comscore -- start again. Were  
13 you able to obtain information from Comscore  
14 regarding the viewer count for all of the 354  
15 websites in your report?

16 A. No, I was not. As I referenced in my  
17 report, they provided data for some of the major  
18 news, US news sites. So I used those as  
19 comparison for what I was getting from SimilarWeb.

20 Q. Approximately how many websites numbers  
21 did you check against Comscore?

22 A. I pulled the ones that were on the site  
23 that -- what the intersection was between what  
24 Comscore had published for their news sites and  
25 what I had available with SimilarWeb.



1 Q. Right. I guess what I'm driving at is  
2 I'm trying to understand as a percentage or  
3 fraction of the 354 websites that you included in  
4 your report how many of those did you look --  
5 obtain data from Comscore?

6 A. If I recall, the report reflected that  
7 there was six sites that accounted for about 12  
8 million of the reported traffic, six out of the  
9 354.

10 Q. And accounted for -- Comscore data that  
11 you looked at accounted for six of the 354  
12 websites?

13 A. If I recall correctly.

14 Q. And approximately 12 of the 98 million  
15 total?

16 A. Again, if I recall the number correctly,  
17 it was around 12 million.

18 Q. That was the visitor count portion.

19 A. Yes.

20 Q. Okay. So as a percentage of the total,  
21 it's a little more than 12 percent, right? 12  
22 million divided by 98 million is probably around  
23 13 percent, right?

24 A. Yeah, ballpark, yes.

25 Q. Okay. So you validated through Comscore

1 approximately 13 percent of your 98 million  
2 number, is that right?

3 A. Ballpark, yes.

4 Q. And whatever six divided by 354 tells us  
5 is a fraction on the websites, right?

6 A. Yeah, by -- just to clarify, I wasn't  
7 trying to get a statistical test. I wanted to  
8 ensure that the Comscore numbers were not -- that  
9 they were conservative and not overly optimistic,  
10 and so I wanted to compare those with another web  
11 traffic service.

12 Q. You mean the SimilarWeb.

13 A. SimilarWeb.

14 Q. So you compared them to Comscore.

15 A. Yes.

16 Q. Okay. And you were able to get Comscore  
17 data for six of the 354 websites, approximately.

18 A. That's correct.

19 Q. And approximately -- it added up to  
20 approximately 12 of the 98 million or 13 percent  
21 of the total, approximately, right?

22 A. Approximately.

23 Q. By the way, do you agree with me that the  
24 fact that there might be any number of unique  
25 daily visitors to a website doesn't tell us how



1 many people read anything in particular on that  
2 website, correct?

3 MR. GRUNBERG: Objection, asked and  
4 answered maybe ten times, but go ahead.

5 A. I didn't look at that. I looked at the  
6 dissemination of the people that could have been  
7 exposed to the defaming statements.

8 BY MR. SCHWARTZ:

9 Q. Okay. I know you didn't look at it. I  
10 just want you to confirm that way what I said, you  
11 either agree or disagree with what I said. The  
12 fact that there may be any number of unique daily  
13 visitors to a website doesn't tell us how many  
14 people read anything in particular on that  
15 website, correct?

16 MR. GRUNBERG: Objection, asked and  
17 answered.

18 A. It's a different measure. It does not  
19 tell you the number of people that read.

20 BY MR. SCHWARTZ:

21 Q. So on page 9 of your report, yes, page 9,  
22 I think it's footnote 21, we hear about Screaming  
23 Frog. That doesn't look right. No, there it is.  
24 It's footnote 12. You cite an article from  
25 Screaming Frog, do you see that?

1 A. Footnote 12?

2 Q. Footnote 12 on page 9.

3 A. Yes.

4 Q. Okay. Did you read that article in  
5 connection with your work in this case?

6 A. Yes.

7 Q. Okay.

8 (Defendant's Exhibit 150 marked)

9 BY MR. SCHWARTZ:

10 Q. So I put before you as Exhibit 150 what I  
11 believe to be the Screaming Frog article you cited  
12 on page 9, footnote 12 of your report. It  
13 certainly seemed to have the same title. Is this  
14 the article?

15 A. It looks like the same article.

16 Q. And is it correct that to some extent you  
17 relied on Screaming Frog to tell you that the data  
18 you were getting from SimilarWeb was accurate and  
19 reliable?

20 A. I provided this as a reference of an  
21 example of the -- some of the analysis that has  
22 been done on SimilarWeb and how it's viewed in the  
23 describe. So in that respect, yes.

24 Q. Okay. So if I go to page -- this is 17  
25 pages. So if you go to the numbers on the bottom



1 right where it says 6/17, there's a section at the  
2 top called the results. Let me know when you're  
3 there.

4 A. Okay.

5 Q. Okay. So what Screaming Frog article,  
6 Exhibit 150, writes under the results about the  
7 various tools they looked at, quote, Overall, the  
8 most accurate tool applied was SimilarWeb which on  
9 average overestimated organic traffic by 1  
10 percent. It overestimated total visit numbers by  
11 17 percent, estimating 15.7 million visits for the  
12 25 websites compared to the 13.4 million actual.  
13 SimilarWeb was the only tool to generally  
14 overestimate traffic, close quote.

15 Do you see that?

16 A. Uh-huh.

17 Q. Okay. So as I understood or understand  
18 this article, Screaming Frog looked at 25 websites  
19 that SimilarWeb was also analyzing, correct?

20 A. That's correct.

21 Q. And then they found that for, I believe  
22 it is 10 -- oh, you know what, maybe we need to  
23 back up for a second. Well, we'll keep going.

24 It looks like they said that it  
25 overestimated traffic, visitor traffic by 17

1 percent, right?

2 A. What it says is total visits by 17  
3 percent.

4 Q. Right.

5 A. So difference in visitors, I just want to  
6 highlight that.

7 Q. Oh, please do.

8 A. So it's actually visits, so it could  
9 be -- it's not unique visitors. So it's a  
10 different metric. So it could be, you know, Jim  
11 Jansen going there three times in an hour or  
12 something like that. So it's different than  
13 unique visitors.

14 Q. I realize it's a different metric. But  
15 the -- there's no question that Screaming Frog  
16 says that on the metric they were looking at,  
17 total visitors, SimilarWeb was overestimating  
18 approximately 17 percent, right?

19 A. Well, the previous sentence, they  
20 overestimated organic traffic by 1 percent. I  
21 mean, that's -- that's pretty accurate.

22 Q. What do you understand them to be  
23 referring to when they say organic traffic?

24 A. Traffic not pushed by ads. So, for  
25 example, a person going from one website to



1 another, clicking on organic link and a search  
2 engine result. Anything that's not done by a paid  
3 advertisement.

4 Q. Okay. If you look on the prior page, 5  
5 of 17, there are some of the results from  
6 SimilarWeb on the chart on the upper half of the  
7 page, correct?

8 A. Yes.

9 Q. They averaged out to 17 percent, some of  
10 them for some of these websites, the SimilarWeb  
11 traffic estimators overestimated by 98 and 128  
12 percent, correct?

13 A. Yes, based on this chart here, yes.

14 Q. And so just so the non math majors among  
15 us understand what that means, Screaming Frog is  
16 saying that the traffic was overestimated by 98  
17 percent, they're saying that whatever number  
18 SimilarWeb reported, it was almost twice what the  
19 actual number was. That's what that 98 percent  
20 means, right?

21 A. 98 percent more, yes.

22 Q. Right.

23 A. Yeah. You know, and I think what the  
24 gist of the article is, what I like about the  
25 article is that he actually presents these

1 averages. So -- and, you know, when you --  
2 there's this kind of -- it is a traffic estimation  
3 service. So I think it's reasonable to expect  
4 that there's going to be some maybe fluctuations  
5 on an individual website.

6 But at a certain point the kind of law of  
7 large numbers takes over and you see it happening  
8 here. That yeah, there were some deviations in a  
9 particular site, but overall, you know, the margin  
10 was 1 percent. And so, yeah, you know, I  
11 acknowledge there may be some deviations at  
12 particular sites. It's kind of well known for  
13 smaller sites, they have trouble estimating,  
14 bigger sites a little more accurate, that kind of  
15 stuff, so . . .

16 Q. Well, the 1 percent figure that you were  
17 relying on in your answer, that's the average  
18 percentage over, correct?

19 A. It's 1 percent over, yeah, they  
20 overestimate.

21 Q. But that's not the total number for the  
22 25 websites that it was over, that's 17 percent,  
23 right? Not 1 percent. The total traffic number  
24 for the 17 -- the 25 websites they looked at was  
25 over by 17 percent. They reported 157 million to



1 SimilarWeb and the actual was 134.

2 A. Yeah, yeah, he did the average of the  
3 sites and then calculated the difference.

4 Q. Right.

5 A. Again, you know, I present this as one  
6 example. Could do a search for what's the  
7 accuracy of SimilarWeb, you're going to see a lot  
8 of these type of studies. And they all end up or  
9 most end up with the same conclusion, SimilarWeb  
10 generally gives you the most accurate results.

11 Q. Okay. Well, the one-eyed man leads the  
12 kingdom of the blind. The fact that SimilarWeb  
13 may be the most accurate doesn't tell us in  
14 absolute terms how accurate SimilarWeb is, does  
15 it?

16 A. Well, it's -- you know, I can point, say  
17 their methodology is sound. People rely on it to  
18 make business decisions in the advertising and  
19 marketing arena. So a lot of money is placed on  
20 these particular numbers.

21 Q. I understand it. But the mere fact that  
22 people think it's the most accurate estimator  
23 doesn't mean -- that alone doesn't tell us that it  
24 is, in fact, an accurate estimator.

25 A. It tells us it's the most accurate

1 estimator.

2 Q. No, but if everybody is off then what  
3 difference does it make if it's the most accurate?  
4 They're all off.

5 A. The --

6 Q. Isn't that true?

7 A. Well, it's -- the -- as far as I know  
8 there's no other approach other than using traffic  
9 estimation tools for doing this type of analysis  
10 across multiple websites.

11 Q. I'm sure you're right. What I'm saying  
12 is the mere fact that among the pieces of software  
13 or companies out there who do this work, they're  
14 the least inaccurate, a/k/a the most accurate,  
15 doesn't tell us alone that they are, in fact,  
16 accurate, does it? Yes or no?

17 A. It's not a yes/no question. I go back to  
18 this, you know, at a particular website there may  
19 be some deviation. But as you add more and more  
20 websites and take the averages of all those  
21 websites, okay, the accuracy is going to improve.  
22 That's the concept of the law of large averages.  
23 The average will regress to the mean or regress to  
24 the expected value as more and more -- as your  
25 number, your sample grows larger and larger.



1 Q. Well, in this sample of 25 it progresses  
2 to a mean of 17 percent overstatement, correct?

3 MR. GRUNBERG: Objection. That is a  
4 misrepresentation of the document.

5 MR. SCHWARTZ: He can explain that.

6 A. The -- as he points out, this is a -- the  
7 17 percent was total visit numbers and not total  
8 unique visitors to the website. So again -- and I  
9 don't know, he doesn't explain exactly how he  
10 calculated that. But the total visits is  
11 different than the total -- than unique visitors.

12 BY MR. SCHWARTZ:

13 Q. I understand there's a difference. But  
14 the data that SimilarWeb gets to estimate total  
15 number of visitors and average unique visitors,  
16 it's all from the same sources, isn't it?

17 A. Well, it's from four different data  
18 collection mechanisms.

19 Q. Right. Right. It's not like there's  
20 some other body of data for daily unique visitors  
21 than there is for total visitors, is there?

22 A. I'm not understanding what your question  
23 is.

24 Q. Well, you're trying to draw a distinction  
25 between the fact that this report represents total

1 traffic and you've relied on SimilarWeb for daily  
2 unique visitors, right?

3 A. Uh-huh.

4 Q. And you think that's important.  
5 Otherwise you wouldn't have said it, right?

6 A. I just -- I bring it up because of the  
7 differences you're pointing out in the 1 percent  
8 average versus the 17 percent traffic.

9 Q. Where does it say that that 1 percent of  
10 organic traffic is daily unique visitors? It  
11 doesn't say that.

12 A. It does not say that.

13 Q. You made that up just now, didn't you?

14 A. I did not make that up. I pointed out  
15 that the organic traffic is 1 percent.

16 Q. Well, that's -- that's interesting to  
17 know. But what you don't seem to want to talk to  
18 me about is that the overall number of visitors  
19 that they counted, whether it was unique or not  
20 unique, is off by 17 percent, isn't it, according  
21 to this report?

22 MR. GRUNBERG: Objection. Objection,  
23 form.

24 A. On page 17 -- excuse me, page 6 it says  
25 overestimated total visit numbers, okay, by 17



1 percent.

2 BY MR. SCHWARTZ:

3 Q. Right. And that, if you look at the  
4 chart on the prior page, they went to 25, they  
5 looked at 25 different websites and in 10 of the  
6 25 an or 40 percent, SimilarWeb overestimated,  
7 right?

8 A. And as I said --

9 Q. Right?

10 A. As I -- they did overestimate on these  
11 particular sites, yes.

12 Q. Right. And the total overestimation  
13 including net of underestimations is 17 percent of  
14 the visitor traffic, correct?

15 A. Of the visits.

16 Q. Correct?

17 A. Of the visits, yes.

18 Q. Right, okay. And my followup question  
19 is: The data that SimilarWeb uses to provide  
20 total visitors comes from the same sources as the  
21 data they get for total unique visitors, isn't it?

22 MR. GRUNBERG: Objection, form.

23 A. I don't know for sure.

24 BY MR. SCHWARTZ:

25 Q. Do you have any reason to suspect there

1 would be one set of data that SimilarWeb scans  
2 from the internet from scraping, from everything  
3 else, for total traffic versus unique traffic? Do  
4 you have any reason to believe that?

5 A. I don't -- I'm trying to answer your  
6 question. I don't know for sure, so.

7 Q. Okay, that's good. You've answered it.  
8 I appreciate that.

9 Did you read any other studies about the  
10 reliability of SimilarWeb data besides Screaming  
11 Frog in connection with your work in this case?

12 A. I've done a lot of work with SimilarWeb  
13 and I've read a lot of these studies over -- since  
14 I've been using traffic estimation services.  
15 There are many out there that attempt to evaluate  
16 SimilarWeb and other traffic estimation tools.

17 Q. And if you were aware of any other  
18 studies that weighed in on the reliability of  
19 SimilarWeb's data, you'd want to disclose that in  
20 your report, wouldn't you?

21 A. There -- I said there are a lot of ones  
22 like this. I provide this as an example of what's  
23 available.

24 Q. Right. Are you aware of any others that  
25 are critical of the reliability and accuracy of



1 the user data that SimilarWeb provides?

2 A. Off the top of my head I know ones that  
3 are critical of it.

4 MR. GRUNBERG: At this point we've been  
5 going almost two hours at this point.

6 MR. SCHWARTZ: Sorry.

7 THE VIDEOGRAPHER: Going off the record.  
8 The time is now 3:06 p.m.

9 (Recess)

10 THE VIDEOGRAPHER: We are now back on the  
11 record. The time is 3:18 p.m.

12 BY MR. SCHWARTZ:

13 Q. Are you familiar with an analytics  
14 company called Ahrefs? Let me see if I can  
15 pronounce it right. Ahrefs. Did I pronounce that  
16 right?

17 A. I'm not sure, but I'm going to say yes.

18 Q. Do you know that in August 2018 they did  
19 an analysis of SimilarWeb's traffic estimates?

20 A. I did not know that.

21 Q. Let's take a look. Let's mark as our  
22 next exhibit.

23 (Defendant's Exhibit 151 marked)

24 BY MR. SCHWARTZ:

25 Q. What do you know about Ahrefs? By the

1 way, just for the record, it's all lower case  
2 A-R-H-E-F-S.

3 A. Yeah, I mean, I've used them before for  
4 different things, but I don't know much about  
5 them.

6 Q. Okay. So if we look at page 7 of 31,  
7 they did an analysis of SimilarWeb for 116  
8 websites and then they looked at a sample of 116  
9 websites from an assessment group called Flippa,  
10 F-L-I-P-P-A and then they compare them. Do you  
11 see that on page 7 of 31?

12 MR. GRUNBERG: And, by the way, let me --  
13 not to interrupt the question, but take your time  
14 to look through that and familiarize yourself with  
15 this article, as you haven't seen it before, so  
16 you're allowed to do that.

17 THE WITNESS: Okay. Okay, I'm at the  
18 page, page 7.

19 BY MR. SCHWARTZ:

20 Q. Page 7, all right. And do you see where  
21 they say they reported their results, it's under  
22 the heading, Here's What We Found? It's not a  
23 heading, it's just text. It says, Here's What We  
24 Found, colon, on page 7.

25 A. Okay. Here's what we found.



1 Q. Do you see the words "Here's What We  
2 Found"? Would it be okay if I just reached over  
3 to point to you where they are?

4 A. Please.

5 Q. Here's what we found, right there.

6 A. Got it, yes.

7 Q. Why don't you read along as I'll read it  
8 into the record. Here's what we found.  
9 SimilarWeb overestimated total unique visitors for  
10 91.67 percent of the websites. SimilarWeb  
11 overestimated total unique visitors by 308 percent  
12 on average. SimilarWeb overestimated total page  
13 views for 70 percent of the websites. SimilarWeb  
14 overestimated total page views by 210 percent on  
15 average. To summarize, SimilarWeb tends to  
16 drastically overestimate actual unique visitors  
17 and page views, according to our testing.

18 Do you see that?

19 A. Yes, I see that.

20 Q. Okay. The -- if the analysis that --  
21 Ahrefs, A-H-R-E-F -- you know what, I misspelled  
22 it, it's A-H-R-E-F-S. Ahrefs.

23 MR. GRUNBERG: I'm going with Ahrefs.

24 BY MR. SCHWARTZ:

25 Q. If the analysis of Ahrefs did of

1 overestimation of total unique visitors by 308  
2 percent were applied to your number of 98 million,  
3 you would need to reduce that 98 million, wouldn't  
4 you?

5 A. Based on the assumptions you just spelled  
6 out there and the -- you know, doing math, yes.

7 Q. Okay. All right. That's all I had on  
8 this. Let me -- to move this along and get you  
9 out of here, let me talk to you about the counting  
10 of the articles that you did.

11 A. Yes.

12 Q. I think you described at, in paragraph 59  
13 of your report, so why don't we take a look,  
14 that's page 19, I believe. And you let me know  
15 when you're on page 19 and you have paragraph 59  
16 in front of you.

17 A. I am there.

18 Q. Okay. So you give an example of one of  
19 the search page results that you generated from  
20 Google on figure 8, on the next page, is that  
21 right?

22 A. Yes.

23 Q. And did you create the screen grab, that  
24 is to say figure 8 as it appears in your report?

25 A. Yes.



1 Q. Okay. And is this, in fact, something  
2 you did yourself?

3 A. Yes.

4 Q. Okay. Quite often Google tells you, in  
5 addition to just giving you the results, they tell  
6 you how many results they found given the search  
7 that you asked Google to do, right?

8 A. Yes. You've got to take it with a grain  
9 of salt, but they do give you a number, yes.

10 Q. What's the grain of salt you have to take  
11 it with?

12 A. Well, when you ask, that is also an  
13 estimation, it's not an actual count. They do a  
14 numerical calculation. So if you get down to page  
15 10, 20, you'll see that they're kind of really not  
16 results, that they're either stub pages or things  
17 like that, so -- but yeah -- yes, they do give you  
18 a number.

19 Q. Is there a reason why that number doesn't  
20 show up on figure 8 for the search you ran?

21 A. I wouldn't know. Maybe because of the  
22 time delimiter I have here. I don't know.

23 Q. All right. And to be clear by the time  
24 delimiter, in other words, you looked for Google  
25 articles in the time frame June 1 to July 31,

1 2018.

2 A. Yeah, in this particular search, yes.

3 Q. In this particular search. The searches  
4 for articles that you were looking to decide  
5 whether or not to include in your report, you ran  
6 those Google searches; is that correct?

7 A. That is correct.

8 Q. And do you identify in your report the  
9 actual -- all of these search queries that you ran  
10 as part of your work in this case?

11 A. The -- not in the report, in page 19,  
12 paragraph 59 I outline the process I used, and  
13 then my spreadsheet had half a dozen of those  
14 queries that I actually kept records of. But it  
15 may not be all-inclusive of every query I ran.

16 Q. I'm sorry, where did you say those search  
17 queries are?

18 A. I believe it's on the first a tab of the  
19 spreadsheet that I submitted with the documents.

20 Q. All right. How did you decide what  
21 search queries to run?

22 A. Well, a rational process. I was  
23 interested in the defaming statements so I said  
24 well, let's start with the defaming statements. I  
25 started with those. And then as I explain here, I



1 would typically take some of the titles of the  
2 articles that were appearing similar, search on  
3 those, and I kept doing that until -- it's called  
4 theoretical saturation where you're just not  
5 getting new results, and then I would stop and  
6 start with the next defaming statement and repeat  
7 the process.

8 Q. Did you run any general search or  
9 searches, for example, like the only search words  
10 were Vernon Unsworth or Vern Unsworth?

11 A. I believe I did give an example. I think  
12 I did run just some general things. But the most  
13 productive were the defaming statements, of  
14 course, and then the titles of some of the  
15 articles.

16 Q. Okay. And then eventually or ultimately  
17 you determined that 605 articles from 354 websites  
18 contained the information you were looking for; is  
19 that right?

20 A. Yes. There's -- as I mention in the  
21 report there's probably more out there, but  
22 there's kind of this practical -- I had to -- you  
23 know, I have a time limit to submit the report, so  
24 I had to stop at some point.

25 Q. So how much time did you spend running

1 searches and looking for articles and deciding how  
2 many articles ultimately to put on your list?

3 A. I would have to check my spreadsheets to  
4 give you an exact number, but that's the bulk of  
5 the effort, the data collection part of -- but I  
6 don't know the exact number.

7 Q. Let's -- I don't want to deprive you of  
8 the ability to give me the most accurate answer  
9 you can, so why don't we go back and just look at  
10 your bills from that period.

11 A. Sure.

12 Q. And see if there's just some way you  
13 could tell me what's going on. So these are  
14 Exhibits 140, 141 and 142.

15 A. 142?

16 Q. 140 and 141.

17 A. So, I mean, I can calculate this up, but  
18 if we looked at the 1 September dated invoice, any  
19 of these tasks where it says market research,  
20 that's the searching and data collection of the  
21 articles, so . . .

22 Q. In other words, is that just the part of  
23 the process sort of throwing out the net to look  
24 for articles, or does that also include reviewing  
25 the articles to decide whether they met the



1 criteria you were looking for?

2 A. It also includes that time.

3 Q. Okay. So that's -- if one went through  
4 this report and added up -- not the report -- if  
5 one went through all your bills and just added up  
6 all the hours for market research, that would tell  
7 us the total amount of time you spent looking for  
8 the articles, and then reviewing the articles you  
9 found to decide whether they did or did not meet  
10 the criteria you were looking for?

11 A. Along with some other tasks like putting  
12 them in the spreadsheet, deduplicating the links,  
13 because sometimes, you know, the URL is really the  
14 same but it has a couple little identifiers, so I  
15 had to go through manually and clean all those up.  
16 So yes, all the stuff to get the data together to  
17 do the analysis.

18 Q. So the -- there are a number of time  
19 entries in both August and September where that's  
20 not the only activity you did work for. So there  
21 isn't any practical way as you sit here today to  
22 disaggregate those and tell me just the amount of  
23 time you spent on the quote unquote market  
24 research?

25 A. Can you give me an example?

1 Q. Yeah, sure. Which exhibit are you  
2 looking at?

3 A. I have both open.

4 Q. So if you look at Exhibit 140 and you  
5 look at 2 August, you have an hour and a half of  
6 time, your task -- oh, excuse me, not market  
7 research. Let's go to 11 August. You have three  
8 hours of time, you have market research and worked  
9 draft report. You couldn't tell us how much of  
10 that three hours was one versus the other at this  
11 point, could you?

12 A. It's -- not exactly.

13 Q. Okay. All right. I have the information  
14 I need, though, thank you.

15 So as I read your testimony -- well,  
16 let's start . . .

17 Let me start again. If we go to page 18  
18 and look at paragraph 58, you write, quote,  
19 Concerning the procedure employed in determining  
20 the dissemination of the statements, I was not  
21 interested in articles that just, your emphasis,  
22 discussed the story in general or other aspects of  
23 the story. I was specifically interested in only  
24 those articles that directly referenced the  
25 defaming statements and were not primarily about



1 this case. This narrowed the focus to a subset of  
2 news articles and other articles which are less  
3 than the articles addressing the overall story,  
4 close quote.

5 Do you see that?

6 A. Yes.

7 Q. All right. So can you -- so from that  
8 paragraph it looks to me like there were two  
9 criteria that you applied to the stories that your  
10 Google searches found in order to decide whether  
11 to include them on your list. One was whether the  
12 article contained the defaming statements; is that  
13 right?

14 A. That is correct.

15 Q. And two was that the article was not  
16 primarily about this lawsuit; is that correct?

17 A. Yes.

18 Q. And so those are two filters you applied  
19 to the articles you found through your Google  
20 searches in order to come up with your list, your  
21 final list on Appendix D, correct?

22 A. Yes. So the defaming statements were to  
23 identify the particular articles and then if it  
24 was a case-related thing then I would filter that  
25 out, so slightly different, but the results were

1 the same.

2 Q. Well, is it the case that before  
3 including an article on your list you reviewed it  
4 to confirm that it did contain defaming  
5 statements?

6 A. Yes, I did.

7 Q. And if an article, even though it came  
8 back from Google from a search query in which you  
9 typed in a defaming statements, you nonetheless  
10 would not include it in your list unless you read  
11 the article and saw that it did, in fact, have  
12 them; is that right?

13 A. Many of the articles I did read the  
14 entire article or I would search for the defaming  
15 statements and find one of the defaming statements  
16 in the article and maybe not read the entirely  
17 thing, yes.

18 Q. Okay. And by search, you mean once you  
19 had the article pulled up on your screen you could  
20 use a search function to let the computer, in  
21 effect, do the hard work of finding the defaming  
22 statements in the article for you?

23 A. It could do the search to locate the  
24 article so I wouldn't have to read the whole  
25 thing, yes.



1 Q. Exactly. And -- all right, let's see.  
2 So what -- did anyone supply you with any criteria  
3 or standards to use in deciding whether an article  
4 did or -- was or was not, quote, primarily about  
5 this case, close quote?

6 A. The -- that, I believe that is something  
7 I developed the criteria to identify those  
8 particular articles.

9 Q. Okay. And what criteria did you use in  
10 your work in this case in deciding whether an  
11 article was or was not, quote, primarily about  
12 this case, close quote?

13 A. Yeah, that, if I recall correctly, one  
14 was the content of the article, if it talked about  
15 the case or its particular scheduling, specific  
16 scheduling about the case. And also the time  
17 aspect, that, you know, I believe it was like the  
18 date the lawsuit was filed or something like that,  
19 that it was after that I screened it carefully --  
20 I screened it more carefully to ensure, see if it  
21 met the -- if it was about the case or was just a  
22 review article about what had happened.

23 Q. When you say "what had happened," you  
24 mean what had happened --

25 A. Before.

1 Q. -- apart from anything having to do with  
2 the case?

3 A. No, it's in terms of like this time  
4 limit, especially, you know, after the original  
5 defaming statements were made, there were some  
6 articles that were kind of summary articles, kind  
7 of explained all the things that had happened up  
8 to that point. But were not primarily about the  
9 case.

10 Q. If you found such an article did you  
11 include it or not include it?

12 A. If it contained the defaming statements  
13 and were primarily not about the case, I included  
14 it.

15 Q. So, again, how much discussion about the  
16 case did an article have to have before you  
17 concluded that the article was quote primarily  
18 about this case, close quote?

19 A. Yeah, it's -- this -- I mean, there is a  
20 certain judgment aspect about it. But I typically  
21 go, like if -- a big indication was the title. If  
22 it mentioned the lawsuit, mentioned the focus on  
23 the case, then I would exclude it.

24 Q. All right. One thing you described which  
25 would be objective about an article is whether it



1 mentioned the case. I get that, that's either  
2 like a zero or a 1, it seems binary, it either  
3 mentions it or it doesn't mention it.

4 A. Yeah.

5 Q. But the other standard you said you  
6 applied was the focus of the article was on the  
7 case. And how would you decide whether an article  
8 did or did not focus on the case, or that the  
9 focus of the article was or was not on the case?

10 A. Yeah, the -- some of these articles that  
11 maybe a good portion of the content was just going  
12 over the timeline of what happened and then the  
13 final statement may be something about a lawsuit.  
14 That would be one example.

15 Q. That would be one example of what?

16 A. Of a case that -- the article that was  
17 not primarily about the lawsuit, but maybe  
18 mentioned it in some way.

19 The other would be the whole thing was  
20 about the lawsuit, a lawsuit got filed and the  
21 whole focus was more to alert the reader that the  
22 lawsuit had -- a lawsuit had happened.

23 Q. And if you came across an article that  
24 did those things, would you include or exclude the  
25 article?

1 A. I would exclude it.

2 Q. I'm sorry?

3 A. Exclude it.

4 Q. So how much content or discussion of the  
5 lawsuit did an article have to have before you  
6 concluded that the article was, quote, primarily  
7 about this case, close quote?

8 A. I don't know if I can give an exact  
9 amount, but it's -- yeah, I can't give an exact  
10 amount.

11 Q. Even if you can't give an exact amount,  
12 can you tell me any rules or standards you applied  
13 in deciding whether there was a certain amount of  
14 content in an article that took to the point where  
15 you concluded that it was, quote, primarily about  
16 this case, close quote?

17 A. If it -- yeah. In my report I list a lot  
18 of the articles, I think 140 articles that were  
19 primarily about the case. I think an example  
20 would be like a single comment about the case --  
21 about the lawsuit, although the rest of the  
22 article was about the defaming statements, the  
23 timeline, I probably would have included that.

24 Q. You probably, or you know that you would  
25 have?



1           A. Again, each article is slightly  
2 different. But I would have included it.

3           Q. You would have included the article under  
4 what circumstances?

5           A. If it -- if it was primarily about the  
6 sequence of events, for example, that had  
7 happened, or -- you know, an example would be when  
8 Mr. Unsworth got his award from the UK government,  
9 you know, it would contain the defaming statements  
10 but it might contain a mention of the lawsuit or  
11 something like that, then I would include it  
12 because it was primarily about the -- him  
13 receiving his award.

14          Q. Right. I understand. But what I'm  
15 trying to understand is where you -- or, rather,  
16 how you drew the line between an article that was  
17 primarily about this case --

18          A. Yeah.

19          Q. -- versus an article that was not  
20 primarily about this case in making the  
21 determinations you made to arrive at your list of  
22 articles.

23          A. The -- for many of the articles it was  
24 fairly cut and dry. So -- but there were a few  
25 where I had to make a judgment call. And, as I

1 said, if there was an offhand comment about the  
2 case I would probably include it. But most of the  
3 cases -- most of the articles that were about the  
4 case were fairly cut and dry, that it was -- so it  
5 was easy to exclude them.

6 Q. Right. The focus of my question wasn't  
7 how hard or difficult the decisions were that you  
8 had to make. The question was: What standards or  
9 rules or guidelines you applied --

10 A. Yeah.

11 Q. -- in order to make those decisions.

12 A. Yeah.

13 Q. And I don't believe you've told me. You  
14 just said, the only thing I've heard so far is if  
15 the only reference to the case was, quote, an  
16 offhand comment, what you said in your last  
17 answer, then you -- let me finish -- then you  
18 wouldn't exclude it. But I'm trying to understand  
19 what standards you actually used during your work  
20 in this case to decide whether an article either  
21 was or was not, quote, primarily about this case.

22 MR. GRUNBERG: Let me object. Objection,  
23 form, to the extent you've said that he hasn't  
24 articulated a standard or answered your question.  
25 He has articulated standards and he has answered



1 your question -- questions, plural. But go ahead  
2 and please answer.

3 A. In reviewing the article, if it was  
4 primarily about the case, again most of the  
5 articles were pretty straightforward. If -- for  
6 the few that were not, I used my judgment.

7 BY MR. SCHWARTZ:

8 Q. Well, what judgment did you use? In  
9 other words, what was the judgment you made?

10 A. I read the article, and if the majority  
11 of the article was not about the case and there  
12 may be a single comment referring to the case then  
13 I would have included it. And honestly, I don't  
14 know how many articles this applies to. Most of  
15 the article were pretty cut and dry, that they  
16 were about the case so I excluded them. There may  
17 be a little bit of overlap or something.

18 MR. GRUNBERG: Look, if you want to put  
19 an article in front of him that you have a  
20 question about, maybe that might help you ferret  
21 out whether there is a standard or what the  
22 standard was, as he's already articulated it.

23 BY MR. SCHWARTZ:

24 Q. Let me ask you this. You said one of the  
25 ways you made these decisions was if the article

1 talked about the case. How much would an article  
2 have to have talked about the case in order for  
3 you to conclude that it didn't pass your  
4 standard -- or did pass your standard of being,  
5 quote, primarily about this case, close quote?

6 A. I'll be honest with you. It's a lot of  
7 focus on what is probably a very small number of  
8 articles. But I would read the article and I  
9 would make my judgment as a rational person  
10 reading the article whether this was about the  
11 case or not.

12 Q. Okay. So does your -- you applied what  
13 you believe to be a rational person standard, is  
14 that what you're saying?

15 MR. GRUNBERG: Objection, form.

16 A. I would read the article, okay, and as a  
17 reader make a determination if it was about the  
18 case or not. Again, most of them were fairly cut  
19 and dry; that it's about the case, or it occurred  
20 before the lawsuit was filed so it was obviously  
21 going to be about the case.

22 BY MR. SCHWARTZ:

23 Q. Okay.

24 A. So maybe -- again, there may be a small  
25 number of articles that, you know, we spent the



1 last few minutes talking about. But -- and for  
2 those I would read them, I would make a judgment  
3 whether to include them or not.

4 Q. I see. Well, I wasn't asking you whether  
5 you made a judgment to include them or not, I was  
6 asking you whether you made a judgment as to  
7 whether they quote unquote primarily concerned the  
8 case. Just want to make sure that's what you were  
9 telling me with you you've given me the answer you  
10 gave.

11 A. Right.

12 Q. Is that what you gave?

13 A. I would read the article and make a  
14 judgment whether the article was primarily about  
15 the case or not. And if it was about the case I  
16 would exclude it, and if it was not primarily  
17 about the case I would include it.

18 Q. I know that. I totally understand that  
19 that's the end result you achieved. Okay.

20 Is there some specialized education,  
21 training or experience that you have as a computer  
22 scientist that qualifies you to make those  
23 judgments about whether an article was, quote,  
24 primarily about this case, close quote, versus not  
25 primarily about this case?

1           A. Well, as a researcher and academic, I  
2   mean, reading papers is part of my job. I read  
3   hundreds of papers. So my job is to analyze  
4   papers and what the topic is, what the structure  
5   is, what the arguments presented. So if --  
6   whether that is part of computer science, no. Is  
7   it part of my job as a scientist to read papers  
8   and evaluate what people have written? Yes.

9           Q. Is that some talent you have that you  
10   believe is -- some expertise you have -- I'll  
11   withdraw the question.

12                  Did Mr. Unsworth's lawyers give you any  
13   guidance in terms of how to decide whether the  
14   articles you found on Google should or should not  
15   be included in your list?

16           A. For the specific articles?

17           Q. Yes. In other words --

18           A. No.

19           Q. -- in culling the articles that Google  
20   presented to you, did Mr. Unsworth's lawyers give  
21   you any input onto how to decide if a particular  
22   article did or didn't qualify to be included on  
23   your list?

24                  MR. GRUNBERG: Objection, form.

25           A. As I outlined in my report, I was



1 provided the defaming statements and I was told  
2 these are the statements that occurred, and so  
3 that's what I used as the starting point. But in  
4 terms of individual articles, no.

5 Q. Well, I meant specifically by way of  
6 example the second of the two criteria, not just  
7 containing the defaming statements, but two,  
8 whether the article was or was not primarily about  
9 this case. Did Mr. Unsworth's attorneys give you  
10 any guidance as to how you should make those  
11 determinations?

12 A. I don't recall them giving me guidance,  
13 no.

14 Q. Did you look for any external materials,  
15 treatises, textbooks, anything, in English  
16 language or usage or anything at all to assist you  
17 in deciding whether a particular article was or  
18 was not, quote, primarily about this case, close  
19 quote?

20 A. I saw no need to, so no.

21 Q. Did you create a list or a log of the  
22 decisions you were making to include or exclude  
23 each of the articles on your list?

24 A. No, I did not keep a log.

25 Q. So, in other words, if the jury wants to

1 see how you did your work, you're not aware of any  
2 record or notes of your work that reflect the  
3 decisions you made or how you made the decisions  
4 you made to include or exclude articles.

5 MR. GRUNBERG: Objection, form.

6 A. The methodology I used to make the  
7 decisions are outlined in my report. The articles  
8 that passed the criteria are in my report. I also  
9 included the dash I believe 140 articles of case  
10 articles that I excluded. So those are part of my  
11 report.

12 BY MR. SCHWARTZ:

13 Q. Right. But there's no list that we can  
14 review in front of the jury that explains, Okay,  
15 for article number 3 here are the reasons why I  
16 chose to include it. Article X that's not on my  
17 list, here are the reasons why I chose to exclude  
18 it. There's nothing like that, is there?

19 MR. GRUNBERG: Objection. I mean, this  
20 is just trending into the area of irrelevant,  
21 particularly because Mr. Musk twice basically  
22 challenged Mr. Unsworth to sue him. And as you  
23 know under the law in California, that makes it  
24 reasonably foreseeable that Mr. Unsworth would,  
25 indeed, have to sue Mr. Musk in order to challenge



1 the false defamatory and heinous statements that  
2 Mr. Musk made about Mr. Unsworth.

3 But go ahead, if you want to continue  
4 going down this road.

5 By MR. SCHWARTZ:

6 Q. Okay. Can you answer my question?

7 A. Could you repeat the question?

8 Q. Sure. There's no list we can review in  
9 front of the jury that explains, for example, for  
10 article number 3, Here are the reasons why I chose  
11 to include it. Article X that's not on my list,  
12 here are the reasons why I chose to exclude it.  
13 There's nothing like that that you created in the  
14 course of your work, is there?

15 A. Well, there is a paragraph that explains  
16 the inclusion part in my report, but I did not  
17 keep a log of the articles that I did not include.

18 Q. But even as to the articles that you  
19 chose to include, you didn't log as you were  
20 making the decisions to include them why you felt  
21 a particular article that you were including met  
22 the criteria, did you?

23 A. As I state in my report, the articles  
24 either included the defaming statements or not.  
25 So it's kind of a binary decision.

1 Q. Well, but it's more than that. You seem  
2 to overlook the other criteria about whether or  
3 not the article was or was not primarily about the  
4 case. You didn't log the decisions you made or  
5 the reasons for the decisions you made on that,  
6 did you?

7 A. Those were articles that I excluded, so,  
8 as I already stated, I didn't keep a log of  
9 articles that I reviewed but did not include.

10 Q. But also as to articles that you included  
11 as having decided that they were, quote, not  
12 primarily about this case, there's no log that  
13 explains the basis for your decision as to why you  
14 believed that the article was not primarily about  
15 the case, is there?

16 A. They included the defaming statements.  
17 So they met the criteria for inclusion.

18 Q. I'm not asking you about whether they  
19 contained the defaming statements. I'm focusing  
20 on whether or not the article was primarily about  
21 the case. Focusing on that --

22 A. Excuse me, sir, that was not your  
23 question. Your question was did I keep a list of  
24 which articles I included. And yes, if they  
25 contained the defaming statements they were



1 included in the list.

2 Q. That's not what I'm asking you about.

3 Let me be very clear so you have a new question.

4 With respect to the decisions you made as to why  
5 an article was not primarily about the case,  
6 therefore if it contained the defaming statements  
7 you would include it, right? That's the -- your  
8 process, right? Contains the defaming statements  
9 and it is not primarily about the case, right?

10 A. I would include it, yes.

11 Q. Yes. Is there a log for the articles  
12 that you did include that explains how you came to  
13 the conclusion that each of those articles was not  
14 primarily about the case?

15 MR. GRUNBERG: Objection, form, asked and  
16 answered.

17 A. For the vast majority of articles there  
18 was no mention of the case. There may have been,  
19 again, one or two that have some offhand  
20 mentioned. But, again, this is a small number of  
21 articles that I didn't -- would even fit this  
22 bill. Most of the articles that were about the  
23 case were obviously about the case, and I excluded  
24 them.

25 Q. Isn't the question I asked you: Is there

1 a log that explains the conclusions you made as to  
2 why an article that may have mentioned the case  
3 was, in your judgment, not primarily about the  
4 case?

5 A. Is there a log that specifies that, no.

6 Q. Now, with respect to whether or not an  
7 article was primarily about the case, was there  
8 some set of objective criteria that you applied,  
9 or did you just make subjective judgments?

10 MR. GRUNBERG: Objection, asked and  
11 answered.

12 A. Could you repeat the question, please?

13 BY MR. SCHWARTZ:

14 Q. With respect to the -- whether or not an  
15 article was primarily about the case, did you  
16 apply a set of objective criteria or subjective  
17 criteria?

18 A. As a thinking person I read the article  
19 and if it was primarily about the case, many times  
20 it was specifically -- you know, it would be  
21 stated in the title or the lead paragraph, I'd  
22 make a determination if it was about the case or  
23 not.

24 Q. What if it wasn't that clear?

25 MR. GRUNBERG: Objection, asked and



1 answered.

2 A. Yeah, I've answered this many times. I'm  
3 done.

4 BY MR. SCHWARTZ:

5 Q. Okay. How many articles did your Google  
6 search tell you that exist that mention Vern  
7 Unsworth?

8 A. I don't recall. I don't know.

9 Q. Do you know an approximate number?

10 A. I don't know approximate, no.

11 Q. How many articles did your search results  
12 generate -- by the way, you did run a, I think you  
13 said, a search for just Vern Unsworth or Vernon  
14 Unsworth?

15 A. I'm sure I did. I can't say for sure but  
16 I would assume I did.

17 Q. Okay. How many articles in your search  
18 results from Google did not contain what you call  
19 in your report the defaming statements?

20 A. That did not, how many?

21 Q. Yes.

22 A. I don't know. I can't recall the number.

23 Q. Can you give us an approximate number, a  
24 ratio or a percentage or a fraction of the total  
25 number of articles that you found using the Google

1 searches that you ran that did not contain what  
2 you call the defaming statements?

3 A. I cannot than give a number. I don't  
4 know.

5 Q. Okay. How does the number, the total  
6 number of articles on the internet that mentioned  
7 Mr. Unsworth but do not contain any of the  
8 defaming statements compare to the number of  
9 articles on your list?

10 A. I don't know. I didn't keep a log of  
11 this.

12 Q. So earlier today I went to Google and I  
13 ran a search, Vernon Unsworth. It returned  
14 approximately 370,000 articles.

15 MR. GRUNBERG: Okay. Go ahead and I'll  
16 object once you articulate this.

17 MR. SCHWARTZ: Okay.

18 BY MR. SCHWARTZ:

19 Q. If that is, in fact, correct information;  
20 in other words, you go to Google today and just  
21 type in Vernon Unsworth or Vern Unsworth and it  
22 yields approximately 370,000 articles, if you were  
23 to express as a fraction the number of articles on  
24 your list to 370,000 articles that Google purports  
25 to know about that mention Mr. Unsworth, that



1 would be -- if you were to do that as a decimal,  
2 if you do the math, at least, just understanding  
3 the math here, that would be -- mean that the  
4 number of articles on your list is a fraction of  
5 the total number of articles that mention  
6 Mr. Unsworth would be .0016. Isn't that  
7 mathematically correct?

8 MR. GRUNBERG: Okay, before you answer, I  
9 would be happy, Bobby, to put you -- or Mr.  
10 Schwartz, to put you right where he's sitting, put  
11 a microphone on you and depose you, if you want to  
12 make representations and testify here about what  
13 you personally found when you ran a Google search.  
14 But I would caution you before you make a  
15 representation about that to understand whether  
16 what you were talking about is --

17 MR. SCHWARTZ: Wait, wait, wait.

18 MR. GRUNBERG: Let me finish.

19 MR. SCHWARTZ: Please. I'm going to let  
20 you finish, but please do not start suggesting  
21 things the witness should say.

22 MR. GRUNBERG: I'm not suggesting things  
23 the witness should say. But if you are going to  
24 represent that there were 374,000 articles which  
25 you did, sir, quote, 374,000 articles -- or

1 370,000 articles as our court reporter said, twice  
2 you said it, 370,000 articles, I'm not going to  
3 let you misrepresent what Google says to the  
4 witness. Because what you're talking about -- and  
5 if you want to pull out your laptop and do this  
6 with me, I'm fine to do that. It says there are,  
7 quote, about 374,000 results. It doesn't say  
8 they're actually articles.

9 Now, if you were to take the time and go  
10 through --

11 MR. SCHWARTZ: Now you're testifying.  
12 You've got to stop that.

13 MR. GRUNBERG: No, I'm not going to stop  
14 that because unless you're going to withdraw the  
15 question or acknowledge the fact that there are  
16 not 370,000 articles.

17 MR. SCHWARTZ: Okay. I'll withdraw the  
18 question. I'll withdraw the question.

19 MR. GRUNBERG: If you use common sense,  
20 obviously there are 374,000 articles, I can't  
21 imagine that much -- with 370,000 articles, think  
22 about that number. It makes no sense. But go  
23 ahead.

24 MR. SCHWARTZ: I object to what you just  
25 did. There may be no point to my saying, that but



1 I think you've gone beyond the bounds of simply  
2 saying object to the form. We'll let the judge  
3 deal with that.

4 BY MR. SCHWARTZ:

5 Q. Let me ask you this question: If the  
6 total results that a Google search turns up, the  
7 results is 370,000, you can't tell me how many  
8 articles there actually are, can you? Counsel is  
9 trying to draw some distinction between results  
10 and articles, isn't he?

11 A. Results may or may not be articles.

12 There may be an overlap.

13 Q. Right. Can you tell us how much overlap  
14 there is here?

15 A. You just told me -- you just gave me this  
16 number a few minutes ago, so no.

17 MR. GRUNBERG: And objection to form. If  
18 you -- again, if you want to make representations,  
19 first you said 370,000 articles, which appears not  
20 to be true. But if you want to make  
21 representations and testify here as to whether you  
22 can tell us there's, in fact, 370,000 articles or  
23 not, I'm happy to get into that colloquy with you.

24 MR. SCHWARTZ: Okay. We can move along.

25 MR. GRUNBERG: But it's not a fair

1 question.

2 MR. SCHWARTZ: You've made your point.  
3 I'm using the word results, so let's stick with  
4 that.

5 BY MR. SCHWARTZ:

6 Q. When Google tells us results or tells you  
7 results in response to a search page, do you  
8 differentiate between results and -- well, by the  
9 way, when Google says there are X number of  
10 results in response to a search, if you were to  
11 keep clicking next, next, next page, next page,  
12 next page, is it possible to see all of the  
13 results that Google tells you it has found?

14 A. You can see all the results displayed.  
15 And as I mentioned earlier, that number is an  
16 algorithmic calculation. So when you actually  
17 look at all the results it may not match the  
18 number that is -- Google estimates that there are.

19 Q. Right, right. Could be smaller, expected  
20 to be smaller.

21 A. It's typically smaller, and the last few  
22 results pages you will typically find are not  
23 really results of any content or value, they're  
24 either -- yeah, you can -- when you go to page 10  
25 and 20, they're not really valid good results.



1 Q. Not valid or good results in the sense  
2 that if you click on them you won't come to an  
3 article about the topic you were looking for?

4 A. It will be -- yeah, it could be a lot of  
5 things, a lot of things that happen. You'll get a  
6 frame page on a particular website that doesn't  
7 really have content but it's kind of indexed under  
8 that particular search term. You'll get kind of  
9 the low quality sites that may have Vern on one  
10 portion and Unsworth somewhere else. It's just  
11 not the --

12 MR. SCHWARTZ: Okay.

13 MR. GRUNBERG: And, by the way, and if  
14 you -- you know, in all fairness, if you want to  
15 be --

16 MR. SCHWARTZ: Don't start testifying.

17 MR. GRUNBERG: But if you want to be fair  
18 to this man, did you go through and look and click  
19 through so you could tell him, you could give him  
20 the full hypothetical so it would be fair to him?

21 MR. SCHWARTZ: Okay. Let's just try and  
22 stay on topic here.

23 BY MR. SCHWARTZ:

24 Q. Is there a way to determine the number of  
25 articles that have been -- that are available to

1 be seen on Google that mention Vernon Unsworth?

2 Is there a way to know what that number of  
3 articles is?

4 A. That's available on the web?

5 Q. Yeah.

6 A. Well, the primary portal would be -- the  
7 primary approach would be to go to one of the  
8 search engines because they would have the  
9 majority of articles indexed. That would probably  
10 be a -- there might be all the articles, it might  
11 be a subset of the articles that are actually  
12 out -- results that are actually out there.

13 Q. Right. But if you wanted to -- if one  
14 wanted to know how many articles have been written  
15 about Vernon Unsworth, regardless of the subject  
16 matter of those articles, not the number of  
17 results, quote unquote, that a search would  
18 generate, how do you do that?

19 A. The number of articles?

20 Q. Yeah.

21 A. Like newspaper articles?

22 Q. Whatever they are. Yeah, it could be  
23 newspapers, blogs, whatever. In other words, if  
24 you want to eliminate from the results all the  
25 chaff of stuff that has Vernon on one page and



1 Unsworth three pages down, is there a way to do  
2 that?

3 A. Well, you could start -- again, I'm just  
4 speaking as a technical person, if I was asked to  
5 do this task, you know, I'd probably start with a  
6 search engine, search the results, so using an  
7 algorithmic approach trying to narrow it down.  
8 And this then it would be some kind of manual  
9 process to have to review the results to see if  
10 they match the Vernon Unsworth that you were  
11 interested in.

12 Q. Okay. But is it correct, as you sit here  
13 today you don't know how many articles have been  
14 written on Vernon Unsworth on the -- that are  
15 available on the internet that do not mention the  
16 defaming statements.

17 A. No, I do not know the number of results  
18 that do not mention the defaming statements.

19 Q. Can you tell me how many articles out  
20 there -- that are out there that do contain the  
21 defaming statements but which were written after  
22 Mr. Unsworth filed this lawsuit?

23 A. I don't have that number because I  
24 stopped doing the analysis at a certain point to  
25 do the report, so I'm sure there have been other

1 articles that have been written since that time,  
2 so I don't know the number.

3 Q. That's not -- in other words, you  
4 didn't -- you haven't undertaken any effort to  
5 determine the number of articles written about  
6 Mr. Unsworth after this lawsuit was filed that may  
7 mention the defaming statements. Excuse me --  
8 yes.

9 A. Well, I -- up to the date I filed my  
10 report, you know, I collected 605 articles, so  
11 some of those are going to meet your criteria, but  
12 I would assume that there's going to be -- that  
13 other articles have been written since I submitted  
14 the report that contain the defaming statements.  
15 As I mentioned in the report, I would assume those  
16 are out there.

17 Q. Okay. But I'm trying to get a sense of  
18 the body of articles -- let's do it one step at a  
19 time -- that exist that are primarily about this  
20 lawsuit, whether they contain or not the defaming  
21 statements or not, I'm not that interested in.  
22 Because as I understand it, if an article was  
23 primarily about this lawsuit, even if it did  
24 include the defaming statements, it's not on your  
25 list, right?



1 A. I did not -- that is correct.

2 Q. Okay.

3 A. I do -- I stated I located, this is a  
4 sample of 140 articles that were primarily about  
5 the lawsuit, contained the defaming statements,  
6 but not included it into my count.

7 Q. So you can't tell us the number of  
8 articles that have been written that are primarily  
9 about this lawsuit, can you? Regardless of  
10 whether they contain the defaming statements.

11 MR. GRUNBERG: Objection, form.

12 A. I --

13 MR. GRUNBERG: By the way, are you asking  
14 if he, as a general principle, can tell you or  
15 whether as he sits here today he has a number for  
16 you.

17 BY MR. SCHWARTZ:

18 Q. As you sit here today do you have a  
19 number for me of the articles that have been  
20 written about Mr. Unsworth that are primarily  
21 about the lawsuit?

22 A. Since I didn't do that analysis I don't  
23 have the number, no.

24 Q. And I take it, then, since you don't know  
25 what these articles are, you couldn't possibly

1 tell me what the daily unique viewers count would  
2 be for the websites on which those articles were  
3 available. That's not information you have  
4 either.

5 MR. GRUNBERG: Again, objection. Are you  
6 asking if he could as a general matter or as he  
7 sits here today?

8 BY MR. SCHWARTZ:

9 Q. As he sits here today.

10 A. Since I didn't do the analysis, no, I  
11 could not give you that number.

12 Q. Okay. And do you know, as you sit here  
13 today, whether someone Googling Vern Unsworth is  
14 more likely to see stories about the lawsuit that  
15 aren't on your list than they are to see any of  
16 the articles that are on your list?

17 A. You're speaking specifically?

18 Q. I am.

19 A. Okay. I don't know.

20 Q. Okay. How many of the articles that are  
21 on your list contain information that's critical  
22 of Mr. Musk?

23 A. Critical of Mr. Musk? I didn't  
24 specifically look at that. I can give you my  
25 general impression of most of the articles were



1 critical of the action rather than critical of  
2 Mr. Musk. But I didn't specifically look at that,  
3 so I don't know.

4 Q. Okay. And just to clarify what you said,  
5 in other words, most of the articles were critical  
6 of Mr. Musk for saying what he said about  
7 Mr. Unsworth? Is that what you mean?

8 A. From reading the articles, yeah, that's  
9 my impression.

10 Q. How many articles on your list say that  
11 what Mr. Musk said about Mr. Unsworth was untrue?

12 A. Untrue?

13 Q. Untrue.

14 A. Again, I didn't specifically look at  
15 that. But I've read a lot of the articles. If I  
16 had to kind of sum it up it would be more of  
17 rather than accusations of untrue as, you know, no  
18 evidence provided, would be the general gist of --  
19 you know, in that vein. But again, I was not  
20 asked to investigate that.

21 Q. I understand. So using that version of  
22 what we're asking about, how many of the articles  
23 on your list report that Mr. Musk had no evidence  
24 to support his statements about Mr. Unsworth?

25 A. Again, I don't have an exact count. I'm

1 just giving you my impressions from reading the  
2 articles. You know, there were some of those.  
3 But most of them were just reporting the actions  
4 of the defaming statements and what happened and  
5 the reactions. But -- so I didn't specifically  
6 look at this aspect of true or untrue.

7 Q. Okay. Some of the articles on your list  
8 state that Mr. Musk was wrong to have said what he  
9 said about Mr. Unsworth, right?

10 MR. GRUNBERG: I'm just going to object  
11 to form, by the way, in terms of you're now  
12 getting into areas that are far afield from what  
13 his report says he's going to give an opinion on.  
14 It's not clear what the relevance is. And if you  
15 want him to now become an expert about whether or  
16 not these articles were critical of Mr. Musk or  
17 not, certainly his report doesn't purport to be  
18 giving an expert opinion on that field. But go  
19 ahead.

20 BY MR. SCHWARTZ:

21 Q. Please answer my question.

22 A. Could I get the question again.

23 Q. Sure. Some of the articles on your list  
24 state that Mr. Musk was wrong to have said what he  
25 said about Mr. Unsworth, correct?



1           A. Again, I was not asked to investigate  
2   this. But from reading the articles, yeah, I  
3   assume there are some that said that.

4                   (Defendant's Exhibit 152 marked)

5   BY MR. SCHWARTZ:

6           Q. So Exhibit 152 is from feedimo.com, and  
7   it's one of the articles on your list, correct?

8           A. I believe so.

9           Q. Okay. And it's headlined, says that what  
10   Mr. Musk said about Mr. Unsworth was baseless,  
11   right?

12                   MR. GRUNBERG: Objection, form.

13           A. Well, as I'm -- as a rational person  
14   reading this, it says -- actually baseless would  
15   qualify feud.

16   BY MR. SCHWARTZ:

17           Q. Sorry. Let me direct your attention to  
18   the first line. It says, Tech entrepreneur Elon  
19   Musk has intensified his baseless attacks against  
20   a British driver who helped coordinate --

21           A. Okay.

22           Q. That's the first line of the article,  
23   right?

24                   MR. GRUNBERG: Just to be clear, I think  
25   you said British driver but you meant British

1 diver.

2 MR. SCHWARTZ: I am so sorry. Let me try  
3 that again.

4 BY MR. SCHWARTZ:

5 Q. Tech entrepreneur Elon Musk has  
6 intensified his baseless attacks against a British  
7 diver who helped coordinate the rescue of 12 boys  
8 and their football coach, correct?

9 A. Yes, I see that statement.

10 Q. And so -- okay. The -- let's see.

11 MR. SCHWARTZ: Let's mark this, please.

12 (Defendant's Exhibit 153 marked)

13 BY MR. SCHWARTZ:

14 Q. Okay. This is 153. This is an article  
15 from Ink. This is on your list of articles,  
16 correct?

17 A. I'm going to believe you and say that it  
18 is.

19 Q. Well, let's just make sure.

20 A. I'm really fine with believing you.

21 Q. Okay. And this article, you'd agree with  
22 me, is critical of Mr. Musk for saying what he  
23 said about Mr. Unsworth?

24 A. As reading the article, yes. You know,  
25 I'll be glad to answer this, but I didn't evaluate



1 these articles on their content or their pro Musk,  
2 pro Unsworth. I just saw did they contain the  
3 defaming statements or not.

4 Q. I understand. Let me ask you a question.  
5 Would anybody this reading the articles that we've  
6 looked at, Exhibit 153 and Exhibit 152, believe  
7 that what Mr. Musk was saying about Mr. Unsworth  
8 was true?

9 MR. GRUNBERG: Objection, form. I mean,  
10 again, you're asking someone who has not been  
11 disclosed to give opinions about what people  
12 believe about what these two articles say, to now  
13 start going far afield and taking everyone's time  
14 to do this. This is irrelevant in terms of what  
15 this man's been retained to do in terms of an  
16 opinion, but go ahead.

17 BY MR. SCHWARTZ:

18 Q. You can answer the question.

19 A. Could I have the question again, please?

20 Q. Yes. Would anybody reading the articles  
21 that we've marked as Exhibit 152 and 153 believe  
22 what Mr. Musk was saying about Mr. Unsworth was  
23 true, from these articles?

24 MR. GRUNBERG: Objection, form. Same  
25 objection.

1           A. Well, sir, you know, I really can't  
2   comment on everybody. When I have read -- if I  
3   look at these articles, you know, I take it that,  
4   you know, baseless attacks, where's the evidence.  
5   That would be my take there.

6           This Ink article, you know, it almost  
7   seems like in a way helpful, that, Hey, you know,  
8   don't be calling someone a pedophile on Twitter.  
9   You know, I wouldn't necessarily say these  
10   articles are actually critical against Mr. Musk,  
11   from my own just reaction to it.

12   BY MR. SCHWARTZ:

13           Q. So if you look at the second page of the  
14   article, let me just make sure that's really what  
15   you think, in other words, that you don't think  
16   this is critical against Mr. Musk.

17           It says, quote, Today, however, it's Musk  
18   who's blatantly flagrantly in the wrong. I have  
19   the same advice for him: Take a long hard look of  
20   your life.

21           You don't think that's critical of  
22   Mr. Musk? You think it's favorable to Mr. Musk?

23           A. Again, this was not what I was asked to  
24   do, so I can only give my just reaction from a  
25   personal reading of this. It kind of comes across



1 to me as a little tough love kind of thing. But I  
2 was not asked to analyze the sentiment or polarity  
3 of these articles. It's something I was not asked  
4 to do.

5 Q. Uh-huh. And that's not something you  
6 feel qualified to do?

7 A. It could be done. I mean, sentiment  
8 analysis is a field in computer science, so you --

9 Q. I meant by you.

10 A. Oh, yeah, if for some reason it was --  
11 you know, I wanted to algorithmically do this, it  
12 could be done.

13 Q. Can you just clarify what you meant by  
14 the "it?"

15 A. If for some reason somebody wanted to  
16 take all 605 articles and do some sentiment  
17 analysis or polarity analysis, there's algorithmic  
18 approaches that can do that within some degree of  
19 probability.

20 Q. But that's not work you've done.

21 A. I've not been asked to do that, no.

22 Q. And you haven't done it.

23 A. No, I've not been asked to do that, so  
24 no.

25 Q. Okay. Just want to be clear. Even

1     though you weren't asked to do it, you didn't do  
2     it on your spare time as well and haven't told me  
3     about it, have you?

4             A.   I don't have any spare time so I did not  
5     do it.

6             MR. GRUNBERG:   Objection, asked and  
7     answered.

8     BY MR. SCHWARTZ:

9             Q.   So, of the articles on your list how many  
10    said in their headlines that Mr. Musk accused  
11    Mr. Unsworth of being something as opposed to  
12    that -- let me just stop there. Let me ask it  
13    again, I mangled the question.

14            The articles on your list, how many said  
15    in their headlines that Mr. Musk accused, in other  
16    words, how many of them used the word accused with  
17    reference to whatever it was Mr. Musk was saying  
18    about Mr. Unsworth?

19            A.   I didn't do that count, so I don't have  
20    the number.

21            MR. GRUNBERG:   I mean, do you want him to  
22    really go through that whole list and count?

23            MR. SCHWARTZ:   I'm just asking if he  
24    knows.

25     BY MR. SCHWARTZ:



1 Q. How many of the articles on your list  
2 said not that Mr. Musk accused Mr. Unsworth of  
3 something, but simply called or Tweeted the  
4 defaming words in the material that was being  
5 quoted in the article?

6 MR. GRUNBERG: Objection, form.

7 A. The -- I did not do that count. And I  
8 just want to point out in my expert report what I  
9 was asked to do, is whether an article contained  
10 the defaming statements or not. And that was the  
11 boundary of my task.

12 Q. Would it surprise you to learn that only  
13 40 of the headlines in the articles on your list  
14 use the term or word accused?

15 MR. GRUNBERG: Objection, form.

16 A. Again, I don't have a reaction of  
17 surprise or unsurprise.

18 BY MR. SCHWARTZ:

19 Q. All right. Let's look at your report, if  
20 we could, in paragraph -- page 17, paragraph 55.  
21 And in paragraph 55.a. you say that 77 percent or  
22 465 of the articles primarily contained the  
23 defaming statement by Mr. Musk about Mr. Unsworth  
24 being a pedophile, do you see that?

25 A. Yes.

1 Q. Okay. And then just skip down to  
2 paragraph 55.c. for a second. You write 47 or 8  
3 percent of the articles primarily concern the  
4 defaming statement by Mr. Musk of Mr. Unsworth  
5 being a child rapist slash having a child bride,  
6 correct?

7 A. That is correct.

8 Q. Okay. Which of the articles on your list  
9 primarily contain the defaming statement by  
10 Mr. Musk about Mr. Unsworth being a pedophile?

11 A. Which of the particular articles?  
12 They're annotated in the spreadsheet you have. I  
13 don't have it off the top of my head.

14 Q. So in other words, if I look at the  
15 spreadsheet it will tell me which of the ones you  
16 believe contain the statement by Mr. Musk about  
17 Mr. Unsworth being a pedophile?

18 A. Yes, they're tagged in the spreadsheet.

19 Q. They're tagged, okay. Now, when you say  
20 these articles concern the defaming statement of  
21 Mr. Unsworth being a pedophile, is that a  
22 reference to Mr. Musk's July 2018 pedo guy Tweet?

23 A. Yeah, primarily the pedo Tweet.

24 Q. Are you aware of any statement where  
25 Mr. Musk -- other than the pedo guy term, where



1 Mr. Musk used the term pedophile, the actual word  
2 pedophile, to describe Mr. Unsworth?

3 A. I am not aware of any other -- any  
4 particular defaming statement like that. As I  
5 said in my report, I was provided these are the  
6 defaming statements.

7 Q. Right. Just to be clear, in other words,  
8 when it references -- or at least the reference in  
9 paragraph 55.a. of Mr. Unsworth being a pedophile,  
10 that references statements where Mr. Musk referred  
11 to Mr. Unsworth as pedo guy?

12 A. Pedo guy, yes.

13 Q. Is that right?

14 A. Yes.

15 Q. Okay. And -- okay. Now, are you  
16 expressing an opinion in this case that the term  
17 pedo guy -- start again.

18 Are you expressing an opinion in this  
19 case that when Mr. Musk used the term pedo guy, it  
20 was synonymous with the term pedophile, or are  
21 you --

22 MR. GRUNBERG: Objection --

23 MR. SCHWARTZ: Let me finish.

24 BY MR. SCHWARTZ:

25 Q. -- or are you simply reporting on the

1 extent to which Mr. Musk used the term pedo guy?

2 MR. GRUNBERG: Objection, form.

3 A. As I stated in my report, I was provided  
4 that these are the defaming statements, and so I'm  
5 not making a determination about the terminology  
6 or language. I was told these are the things  
7 that -- find the dissemination.

8 Q. In other words, your job is to report  
9 numerical information, not to decide whether  
10 pedophile and pedo guy mean the same thing, is  
11 that right?

12 A. I was not asked to do that, no.

13 Q. Okay. And when you write in paragraph  
14 55.a. that whatever number of articles and  
15 whatever percentage of articles, quote, primarily  
16 contain, close quote, the defaming statement, what  
17 do you mean by primarily?

18 A. That as the saga wore on, there became  
19 more and more kind of summary articles. So there  
20 were -- there were many articles that just  
21 addressed pedo guy and nothing else. But as,  
22 again, the saga went on there were a few articles  
23 that were kind of summary articles that devoted  
24 most of the content to the pedo guy defaming  
25 statement but may have talked about something



1 else.

2 Q. All right. Let's go to the next page and  
3 look at paragraph 55.b. There you write that 95  
4 articles or 15 percent of the articles primarily  
5 concern a Tweet from Mr. Musk where he apologized  
6 for his defaming statements against Mr. Unsworth,  
7 although all of these articles mentioned one or  
8 more of the defaming statements. Do you see that?

9 A. Yes.

10 Q. Okay. The apology, you say a Tweet from  
11 Mr. Musk where he apologized. Is that the July  
12 18th -- are those the July 18th Tweets from  
13 Mr. Musk that you're referring to here that are  
14 being mentioned in these articles?

15 A. Yes, I mention in my report and give the  
16 Tweet that he responded to, somebody else's  
17 article about, yes.

18 Q. Okay. And I can assume those are also  
19 annotated, which articles you're referring to here  
20 is also annotated in your spreadsheet?

21 A. Yes, sir.

22 Q. So I could look at those articles and  
23 then add up the daily unique visitors for the  
24 websites on which those articles appeared to  
25 determine the unique visitors to websites who

1 saw -- on which the content of those 93 articles  
2 was made available?

3 A. It's not that simple.

4 Q. Oh, all right.

5 A. Because a lot of these sites published  
6 multiple articles. So they may have published the  
7 apology but also the pedo guy comment. So you  
8 can't just disambiguate, oh, everything that --  
9 because I only included one article from a site,  
10 no matter -- even if they published six, I only  
11 included one day of traffic. So they could have  
12 did an apology article but also did a pedo file  
13 article.

14 Q. Totally fair, let me try and rephrase the  
15 question. If I wanted to know how many of the 98  
16 million people in your daily average viewer total  
17 saw one of the 93 articles in paragraph 55.c., I  
18 could figure that out by adding up the daily  
19 average traffic to the websites for those  
20 articles, because you've tagged them in your  
21 spreadsheet, right?

22 MR. GRUNBERG: Objection, misstates prior  
23 testimony.

24 A. As you have mentioned several times, the  
25 traffic for this particular article is not there.



1 What is reported is the traffic dissemination to  
2 the website.

3 BY MR. SCHWARTZ:

4 Q. Yes, all right. And I understand that's  
5 a recurring theme in the deposition. Trying to  
6 put that aside and just say, Look, if I want to  
7 know how many of your -- how many articles -- how  
8 many daily average viewers were there on the  
9 websites to which these 93 articles were  
10 dissemination, I could figure that out by -- from  
11 your spreadsheet because your spreadsheet is going  
12 to tell me where those articles ran.

13 MR. GRUNBERG: Objection, form.

14 A. Close.

15 BY MR. SCHWARTZ:

16 Q. All right, help me out.

17 A. You could tell the number of websites and  
18 articles and the daily unique visitors to which  
19 the apology was possibly dissemination, yes.

20 Q. Correct. Got it. Thank you.

21 All right, next, in paragraph 55.c.  
22 the -- this is that 47 of your articles primarily  
23 concern the statement by Mr. Musk of Mr. Unsworth  
24 being a child rapist, having a child bride. And  
25 my first question is: The statement about child

1 rapist, child bride, those -- those are the  
2 statements that first appeared in the BuzzFeed  
3 article of September 4, 2018.

4 A. Can you clarify which --

5 Q. Oh, paragraph 55.c.

6 A. Yes. Yes, I believe if you go back in  
7 the report I clue the reference to BuzzFeed emails  
8 that talk about the child rapist, child bride,  
9 that sort of thing.

10 Q. That was the source of the public  
11 reporting about Mr. Musk saying those things about  
12 Mr. Unsworth, right?

13 A. Yes, I believe those were the sources  
14 that then got disseminated through BuzzFeed and  
15 other outlets.

16 Q. Okay. So about 8 percent of your  
17 articles primarily concerned the statements  
18 Mr. Musk reportedly made about Mr. Unsworth to  
19 BuzzFeed that then got republished, et cetera,  
20 correct?

21 MR. GRUNBERG: Objection, form.

22 A. That -- I don't know specifically about  
23 the emails, but they reference the BuzzFeed  
24 article or the defaming statements that were made.

25 Q. All right. And so just to be clear,



1 these 47 articles are different articles from the  
2 465 articles you discuss in paragraph 55.a. of  
3 your report?

4 A. Yes, those -- I put them each in these  
5 separate buckets to separate them out, yes.

6 Q. Okay. And if I go to your spreadsheet it  
7 will tell me which articles contain -- which  
8 articles are these 47 articles, correct?

9 A. Yes, these articles are tagged in the  
10 spreadsheet.

11 Q. And then I can find the average daily  
12 viewer -- visitors to those websites by looking at  
13 your other chart, correct?

14 A. Yes, from those domains that those sites  
15 were published on, you can get the dissemination  
16 of these particular defaming statements.

17 Q. Okay. So have you looked to see what the  
18 dissemination is, in other words, the daily  
19 average viewer dissemination metric is, for these  
20 47 articles?

21 MR. GRUNBERG: Objection, form. And, by  
22 the way, you keep on saying daily average viewer,  
23 but I think you mean daily average visitor.

24 MR. SCHWARTZ: Thank you, Counsel, so  
25 much. Let me back up and start again.

1 BY MR. SCHWARTZ:

2 Q. Have you done any analysis to determine  
3 what the daily average visitor metric is for the  
4 websites that hosted the 47 articles in paragraph  
5 55.c.?

6 A. As I mentioned, it's not as cut and dry  
7 as that, because it's -- when you get to the  
8 traffic, or the unique visitors, there's overlap  
9 because, again, these sites may have published an  
10 article that's in all three of these buckets, you  
11 know. So --

12 Q. I see, okay.

13 A. It's not as cleancut as saying, Oh,  
14 this -- only these 47 articles had this  
15 dissemination, because if a website occurred at  
16 all three buckets I only counted it once, so . . .

17 Q. I see. Okay, okay, thank you. All  
18 right.

19 Page 15, paragraph 48, in paragraph 48  
20 you write, the second sentence, From Mr. Musk's  
21 Twitter account millions of people could have seen  
22 the defaming statements, and we know based on  
23 screen shots above of Tweets containing the  
24 defaming statements that will thousands of people  
25 directly interacted with the Tweets. I wanted to



1 ask you some questions about that.

2 A. Sure.

3 Q. First of all, you don't know how many  
4 people actually did see, on Twitter, that is to  
5 say, Mr. Musk's Tweets concerning Mr. Unsworth, do  
6 you?

7 A. I did not analyze that, so no, I do not.

8 Q. And you don't know how many people -- how  
9 many of his Twitter followers actually read any of  
10 his Tweets concerning Mr. Unsworth, do you?

11 A. I didn't analyze that, so no.

12 Q. And are you generally with how the  
13 Twitter app works?

14 A. Yes, I use -- I did one of the original  
15 Twitter research papers, had a Twitter account for  
16 many years, so yes.

17 Q. Okay. So the fact that Mr. Musk may have  
18 had 20 million plus followers in July 2018 doesn't  
19 mean that when he Tweeted about Mr. Unsworth 20  
20 million people saw it or even knew about it,  
21 right?

22 A. You don't know that for sure, yes.

23 Q. So for one of Mr. Musk's followers to  
24 have -- all right, let me back up for a second.

25 The -- I'm trying to come up with a

1 concept here of what I call automatic or passive  
2 receipt of the Tweet. There are some  
3 circumstances under which somebody who follows  
4 somebody else on Twitter passively or  
5 automatically gets all their Tweets, and there are  
6 some circumstances where that doesn't happen,  
7 right?

8 A. Yeah, there's different approaches, yes.

9 Q. Right. So for somebody in July 2018 who  
10 was following, one of the 20 million followers of  
11 Mr. Musk's Twitter account, to have automatically  
12 gotten his Tweets regarding Mr. Unsworth or  
13 passively receive them without doing anything,  
14 that person first would have had to set up a  
15 notification to receive any Tweet from Mr. Musk,  
16 right?

17 MR. GRUNBERG: Objection, form.

18 A. I mean, if they're following -- yeah, if  
19 a person's following they can see their Tweets.  
20 But this number of followers, it's more kind of  
21 akin to what I did with the traffic, the website  
22 traffic. It's the number of people that it  
23 possibly could have been disseminated to. It's --  
24 don't know, can't say for sure whether a  
25 particular person saw a particular Tweet.



1 MR. GRUNBERG: And are you trying to  
2 represent -- just so I make sure it's clear, are  
3 you trying to represent that in order for a user  
4 on Twitter to receive a notification of Mr. Musk's  
5 Tweet that the user has to go and select some  
6 button or something to receive a notification of  
7 Mr. Musk's Tweets specifically, not just you're  
8 allowing your phone to receive notifications from  
9 Twitter in general? That's not clear to me.

10 MR. SCHWARTZ: I think that's a slightly  
11 different question.

12 MR. GRUNBERG: Because it's different.

13 MR. SCHWARTZ: Let me clarify if there's  
14 any ambiguity in the record.

15 BY MR. SCHWARTZ:

16 Q. The fact that somebody, just some  
17 hypothetical person out there is a follower of  
18 Mr. Musk, what does that mean as a function or a  
19 practical consequence when Mr. Musk issues a  
20 Tweet?

21 A. Well, if you are following someone on  
22 most of these social media platforms like Twitter  
23 then those people that post or Tweet, that comes  
24 up in your social media feed. And so as you  
25 scroll through your feed you can see the post that

1 the people you're following are making.

2 Q. But in order to see those Tweets you have  
3 to go to your timeline or chronology to see what's  
4 been posted there, right?

5 MR. GRUNBERG: By the way, objection,  
6 form. I mean, I can take him out of the room and  
7 tell you -- and tell you all the things that are  
8 incorrect about that, and I don't think it's fair  
9 to make those types of representations about  
10 Twitter that just don't grasp what the app is  
11 doing. But go ahead.

12 BY MR. SCHWARTZ:

13 Q. That's why I'm asking the questions.

14 A. A way to view it is, you know, typically  
15 called a stream. So you can, when you go to your  
16 Twitter app or your Twitter page you can see the  
17 flow of social media comments that have been  
18 posted or re-Tweeted or shared by the people that  
19 you've followed.

20 Q. So if you're an Elon Musk Twitter  
21 follower in July 2018, in order to see -- unless  
22 you've done something in Twitter to cause  
23 Mr. Musk's Tweets to show up on your home screen  
24 or to alert you, send you an alert to the fact  
25 that he's Tweeted, you'd have to go to your



1 Twitter screen and see if Elon Musk had Tweeted,  
2 right?

3 MR. GRUNBERG: Objection, form. And  
4 again, are you saying that you generally allow  
5 notifications on the Twitter app on your phone?

6 MR. SCHWARTZ: That's why I'm trying to  
7 ask him to tell me what's going on with Twitter.  
8 That's why I'm asking these questions.

9 A. Okay. Again, you know, I didn't even  
10 include these numbers in my count. But typically,  
11 yeah, it just flows through your stream and a  
12 typical -- I can say myself when I'm on a social  
13 media site, again I jumped off Twitter, but yeah,  
14 you scroll through your stream and see what people  
15 have posted and sometimes you read, just read,  
16 sometimes you interact with. So it's once you  
17 kind of set up that connection, you don't need to  
18 do anything.

19 Q. But is it true, though, that unless  
20 someone looks at their stream they're not seeing  
21 the Tweet from the person they're following?

22 MR. GRUNBERG: Objection, form.

23 MR. SCHWARTZ: He can say no, he can say  
24 yes.

25 MR. GRUNBERG: This case has hundreds of

1 articles with Elon Musk's Tweets posted in the  
2 articles themselves outside of Twitter.

3 MR. SCHWARTZ: I'm very well aware of  
4 that, yes. I'm aware of that.

5 MR. GRUNBERG: So the question you're  
6 asking is unfair.

7 MR. SCHWARTZ: I don't think it's the --

8 MR. GRUNBERG: It misrepresents the  
9 evidence. But go ahead.

10 MR. SCHWARTZ: I'm just talking about  
11 within the world of Twitter.

12 BY MR. SCHWARTZ:

13 Q. Within the world of Twitter if it -- was  
14 there some way for Mr. Musk's 20 odd million  
15 Twitter followers to know that he had posted or  
16 Tweeted about Mr. Unsworth without checking their  
17 Twitter stream?

18 MR. GRUNBERG: Objection, form.

19 A. Well, within the confines of Twitter, I  
20 mean, you have to look at -- you have to look at  
21 the app, you have to look at the website to see  
22 the Tweets. If I'm understanding --

23 BY MR. SCHWARTZ:

24 Q. No, you're right. You are answering my  
25 question, you're right.



1           A.   Okay.

2           Q.   So, but to put it slightly differently,  
3   the mere fact that I'm -- I was -- I'm not, but if  
4   I were, a follower of Elon Musk on Twitter doesn't  
5   mean that I'm going to get some notification on my  
6   device or when I log onto Twitter that immediately  
7   says, Hey, Elon Musk has issued the following  
8   Tweets, and here they are. Is that right?

9           MR. GRUNBERG: Objection, form. And you  
10   know what, I'll let you answer and then we're  
11   going to take a break.

12          A.   The -- in that particular scenario  
13   someone could either see the entire stream that --  
14   not only Mr. Musk, but everybody they were  
15   following, his Tweets would be with -- meshed with  
16   other people. Or if people could go directly to  
17   his Twitter page and see all his Tweets. I mean,  
18   those would be two -- the two primary ways of  
19   seeing what he has Tweeted. Either something that  
20   is just passive where you don't have to do  
21   anything, or something you'd go and actively seek  
22   something else.

23          MR. SCHWARTZ: Okay. Counsel wants to  
24   take a break, so let's go off the record.

25          THE VIDEOGRAPHER: Going off the record.

1 The time is now 4:39 p.m.

2 (Recess)

3 THE VIDEOGRAPHER: We are back on the  
4 record. The time is now 4:49 p.m.

5 BY MR. SCHWARTZ:

6 Q. Okay. I want to finish this up quickly,  
7 and I think I can ask you one question now that  
8 might close this up very quickly. You're not  
9 offering any opinion testimony or any testimony in  
10 this case as to the number of Twitter followers of  
11 Mr. Musk who actually read any of his Tweets about  
12 Mr. Unsworth, correct?

13 A. I've not been asked to do that, no.

14 Q. And I think in your report you report on  
15 the number of people who interacted with his  
16 Tweets, right?

17 A. I mention that in the report, yes.

18 Q. And that's about 3362 people?

19 A. Without looking at the report, I -- is  
20 there a particular paragraph is?

21 Q. No, I don't have that.

22 A. I don't know that number.

23 Q. My last topic -- and I really do want to  
24 get you out of here -- is just to understand what  
25 you can tell me about how Google arranges



1 searches. So when you were doing the searches you  
2 ran, can you tell me, for example, one thing:  
3 Does Google place more recently published stories  
4 ahead of older stories?

5 A. The -- it's a proprietary algorithm so I  
6 don't know for sure, but the general analysis that  
7 has been done, especially in news articles that  
8 the most recent ones will be -- that's one of the  
9 factors they use in ranking the results.

10 Q. Do you know any other factors that Google  
11 takes into account in ranking or prioritizing  
12 which links or stories come up ahead of others?

13 A. Yes.

14 Q. What are they?

15 A. I've been told there's 201, so I will  
16 cancel my flight.

17 Q. No, I don't want you to do that. Just  
18 maybe one or two of the more significant ones.

19 A. Sure. The credibility of the site, so --

20 Q. Okay. And the other?

21 A. Another one would be the number of  
22 perhaps links that point to that particular  
23 article or that particular site. They use those  
24 as anchor texts.

25 Q. And is it correct that the results that

1 Google provides in response to a given search will  
2 change over time?

3 A. They can change over time, yes.

4 Q. And one of the things that influences  
5 whether Google search results change is whether  
6 there's content, new content available on the  
7 internet that meets the criteria of the search  
8 request that a user makes, right?

9 A. New content that then has the outranking  
10 factors that outrank the current content. So yes,  
11 I mean, that can happen.

12 Q. So the results of a Google search for  
13 Vernon Unsworth done today may look very different  
14 than a result -- search results of a search done  
15 for Vernon Unsworth before the cave -- the kids  
16 got lost in the cave, right?

17 A. Assuming you don't do any time parameters  
18 on it, yes, it could change over time.

19 Q. In other words, if somebody did a search  
20 of Vern Unsworth before those kids ever got lost  
21 in the cave and compare that to a search of Vern  
22 Unsworth today, those results you'd expect to look  
23 very different, wouldn't you?

24 A. I would expect those results to look  
25 different.



1 Q. And even if you did a search -- the  
2 search you ran of -- you asked for pedo guy, I  
3 think you tried to figure out what that search  
4 result would look like back at the time Mr. Musk  
5 made that Tweet in July 2018; is that right? Or  
6 were you looking to see what it looked like more  
7 currently?

8 A. The -- I set a time parameter on it just  
9 to make sure I didn't get anything before he  
10 actually said it, because sometimes, you know, you  
11 just don't know how the algorithm works. And then  
12 in the screen shot I did have the time period up.  
13 But for most of my searches I just didn't put  
14 any -- I just searched on Google.

15 Q. Does that mean then the search results  
16 would reflect Google's current results for those  
17 searches?

18 A. That would -- well, yes, if there's no  
19 delimiting parameters, yes, it would be at the  
20 point of time you did the search.

21 Q. If Mr. Unsworth wins this case at trial  
22 would you expect to see a lot of stories written  
23 about that?

24 MR. GRUNBERG: Objection, form.

25 A. It's not my -- if we've covered

1 journalism is not my area, but as a rational  
2 person I would expect there would be articles  
3 about the case.

4 BY MR. SCHWARTZ:

5 Q. And would you expect some of those  
6 articles or many of those articles to show up in  
7 Google search results with searches were run after  
8 the trial outcome for Mr. Unsworth?

9 A. I would expect them to show up in Google  
10 results and it would, of course, vary by the query  
11 that was ran, but if -- yeah, you would expect  
12 there would be some search results of the outcome  
13 of the case.

14 Q. Right. So let's say the search query is  
15 simply Vernon or Vern Unsworth. If Mr. Unsworth  
16 wins this case, even if he's awarded just a dollar  
17 and there are stories written about that, would  
18 you expect to see those stories be returned by  
19 Google if you ran a search for Vernon Unsworth?

20 A. I would have to test that out, so his  
21 contributions to the Thai cave got a lot of press  
22 also. So I would have to -- if it was just his  
23 name I would have to -- I would expect there to be  
24 probably some case articles, but I couldn't -- I  
25 would have to test that if something like that



1     happened.

2           Q.   And would you also have to test to  
3   determine whether if Mr. Unsworth wins this case,  
4   even if it's just a dollar, and articles are  
5   written about that in leading publications or the  
6   same kinds of publications that have written about  
7   this matter so far, that if you at that point did  
8   a search on Google for Vernon Unsworth you would  
9   not necessarily see the articles on your list on  
10   the first couple of search page results from  
11   Google if you were, say, 10 articles per page?

12          A.   Again, we're talking kind of hypothetical  
13   here. But if -- especially if it was on the news  
14   domain, I think you would see the news articles be  
15   in those -- be in the top search results. Some of  
16   those may contain the defaming statements also, so  
17   it's kind of hypothetical. I can't say for sure.

18          Q.   Right. So if those stories were written  
19   about the outcome of this case, they were  
20   primarily about the lawsuit, those were stories --  
21   those stories aren't on your list of -- you  
22   omitted those, right?

23           MR. GRUNBERG: Objection, form.

24          A.   Well, those stories don't exist, so --  
25   those stories don't exist. The stories you're

1 talking about don't exist yet, so yes, they're not  
2 on my list.

3 BY MR. SCHWARTZ:

4 Q. No, no, no, no, no. I'm saying stories  
5 that have been written to date that were primarily  
6 about the lawsuit aren't on this list. That was  
7 one of the filters you applied to decide whether  
8 something would be on your list, right?

9 MR. GRUNBERG: When you said outcome of  
10 this lawsuit, you weren't trying to mean final.  
11 Look at your question you asked. You said outcome  
12 of this lawsuit.

13 MR. SCHWARTZ: All right. If that's what  
14 I said, I withdraw the question.

15 We're so close to being done. I really  
16 want to get you out of here.

17 BY MR. SCHWARTZ:

18 Q. With respect to the articles that are on  
19 your list, one of the filters you applied to keep  
20 an article from appearing on your list is if the  
21 article was primarily about this lawsuit, right?

22 A. Yes.

23 Q. Okay. So now let's come forward in time,  
24 going into the future. This case is over. The  
25 jury has come back. They have ruled in favor of



1 Mr. Unsworth, even if they've only awarded him a  
2 dollar. Stories have been written by some of  
3 the -- or have been posted on some of the websites  
4 that your articles were posted on. Now you run a  
5 new search of Vernon Unsworth.

6 Sitting here today, you can't tell us  
7 where in the ranking of search results stories  
8 about the outcome of this lawsuit will be in  
9 relation to stories that are on your list, can  
10 you? You can't know that now, can you?

11 MR. GRUNBERG: Objection, form. I mean,  
12 you're asking him to talk about articles that  
13 don't even exist. But if you can answer, go  
14 ahead.

15 BY MR. SCHWARTZ:

16 Q. Well, what I'm really asking about is  
17 your knowledge of how Google ranks search results.

18 A. Yeah, yeah.

19 Q. You would expect, would you not, that  
20 some of the stories that might appear that are on  
21 your list that would appear on a Google search  
22 right now today of just Vern Unsworth might no  
23 longer appear on the first few pages of a search  
24 on Google, right?

25 A. Yeah, given all those hypotheticals --

1 MR. GRUNBERG: Objection, form.

2 A. Given all those hypotheticals, that is a  
3 possibility. New articles that might get ranked  
4 higher than existing articles. Yes, that can  
5 happen.

6 BY MR. SCHWARTZ:

7 Q. And all of the articles that are on your  
8 report could be pushed off the first few pages,  
9 assuming they are wherever, but all of them could  
10 be pushed off the first few pages of Vernon  
11 Unsworth search results, right?

12 MR. GRUNBERG: Objection, form.

13 A. Again, it's one of these is it possible  
14 questions. But, again, it's something we'd have  
15 to test out because I don't know the number of  
16 articles, I don't know -- it's something in the  
17 future. I haven't looked into it.

18 BY MR. SCHWARTZ:

19 Q. Right. Well, assume -- the only  
20 assumption I can ask you to make is that whatever  
21 level of interest there has been in writing  
22 stories about what Mr. Musk has said about  
23 Mr. Unsworth in the past that you've studied  
24 continues to exist, and that the websites that  
25 have hosted the stories that are in your



1 collection of articles continue to host stories  
2 about the controversy. That's the only thing we  
3 can assume would be constant, otherwise, given  
4 that fact it's quite possible that the stories  
5 that merely contain, if you will, the defaming  
6 statements that are on your list, I guess all of  
7 them on your list, would be pushed below the first  
8 few pages of search results?

9 A. I think the key thing you're leaving out  
10 here is when the search occurs. And, again, this  
11 hypothetical that let's say, you know, that the  
12 lawsuit gets -- is decided and that's -- the  
13 search, this hypothetical search occurs that day.

14 Q. Or in the next few weeks.

15 A. Or then this occurs a month later, or six  
16 months later or a year later.

17 Q. Just assume one month.

18 A. I definitely don't know that.

19 MR. SCHWARTZ: Okay. I want to thank you  
20 for your time. I know you need to get to the  
21 airport so let me say I have no further questions,  
22 but thank you very much.

23 THE WITNESS: Thank you.

24 EXAMINATION

25 BY MR. GRUNBERG:

1 Q. And quickly, just to be clear,  
2 Mr. Jansen, you -- do you have opinions beyond the  
3 opinions in your summary of opinions with regard  
4 to this case?

5 A. My opinions are -- what the summary of my  
6 opinions are the summary of my report and then, of  
7 course, all the supporting data and the content I  
8 used to get that summary that's contained in my  
9 report.

10 Q. Do you have an opinion with regard to  
11 whether or not Mr. Unsworth has an on-line  
12 presence, had an on-line presence before the CNN  
13 story?

14 MR. SCHWARTZ: Before the -- what was it?  
15 Oh, the CNN story.

16 BY MR. GRUNBERG:

17 Q. Whether Mr. Unsworth had little to no  
18 on-line presence before the appearance on the CNN  
19 report. Do you have an opinion about that?

20 A. I do mention in my report I did searching  
21 for him and I found next to no on-line presence  
22 prior to the cave rescue event.

23 Q. You would testify to that at trial.  
24 Would you testify to that at trial?

25 A. Yes, it's in my report.



1 Q. Do you have an opinion as to whether --  
2 do you have an opinion as to whether there were  
3 articles mentioning the lawsuit regarding the  
4 defaming statements of Elon Musk but also  
5 mentioning the lawsuit?

6 MR. SCHWARTZ: Objection, vague and  
7 ambiguous. Sorry, object as to form.

8 A. Well, as I mention in the report, there  
9 were articles that address the caves but also  
10 contained the defaming statements. I believe I  
11 list 140 of those from a sample search.

12 Q. And you would be able to testify to that  
13 at trial?

14 A. It's in my report, so yes.

15 Q. And do you have an opinion as to whether  
16 or not there were articles published in the U.K.  
17 about Mr. Unsworth and the defaming statements of  
18 Mr. Musk?

19 A. That is also in my report. I believe  
20 there was 31 different countries, including the  
21 United Kingdom.

22 Q. And would you be prepared to testify to  
23 that opinion at trial?

24 A. Yes, it's in my report.

25 MR. GRUNBERG: That's all I have.

1 FURTHER EXAMINATION

2 BY MR. SCHWARTZ:

3 Q. Just to clarify. Counsel for  
4 Mr. Unsworth just asked you about whether you  
5 would be prepared to give certain opinions at  
6 trial, right? You remember that just a second  
7 ago?

8 A. As I reflect on it, yes, I recall it.

9 Q. Okay. Are all of those opinions  
10 contained within your report?

11 A. Every question the counsel asked me was,  
12 yes, somehow addressed in my report.

13 Q. There aren't any opinions even including  
14 whatever counsel just asked you about that you're  
15 going to be giving at trial that aren't already in  
16 your report, are there?

17 A. As I sit here I'm only going to testify  
18 what's in my report. I do have, of course, the  
19 paragraph if some new analysis comes up or  
20 something like that. But right now these are my  
21 opinions as contained my in my report.

22 Q. If you were to show up at trial with  
23 anything different I would object to it, just so  
24 I've made that for the record. But I thank you  
25 very much.



1 THE WITNESS: Thank you.

2 THE VIDEOGRAPHER: This concludes the  
3 videotaped deposition. The time is approximately  
4 5:03 p.m. We are off the record.

5 (Off-the-record discussion)

6 (Off video)

7 MR. SCHWARTZ: So why don't we say, look,  
8 we'll give him till like -- I'm happy to say close  
9 of business on Tuesday for him to tell you whether  
10 he needs to make any changes, you'll promptly let  
11 us know.

12 MS. WADE: That's fine.

13 MR. SCHWARTZ: And if there's some  
14 correction to the filing we've made you will allow  
15 us to make the filing to fix the pages we've  
16 attached. But -- let me make a call and make sure  
17 Mike is okay with this. He can go.

18 (Off-the-record discussion)

19 MR. SCHWARTZ: So reporter thinks we'll  
20 have the transcript Thursday afternoon, you'll  
21 send it electronically to him, and by 5:00 p.m.  
22 Monday your time you'll let us know if there are  
23 any changes?

24 MS. WADE: Yes.

25 MR. SCHWARTZ: And if we haven't heard

BERNARD J.JANSEN, PHD

November 04, 2019

1 from you the unsigned original can be used, blah,  
2 blah, blah.

3 (Deposition concluded at 5:13 p.m.)

4 (Signature reserved)

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BERNARD J.JANSEN, PHD

November 04, 2019

CERTIFICATE

STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the colloquies, questions, and answers were reduced to typewriting under my direction; that the transcript is a true and correct record of the evidence given upon said proceeding.

I further certify that I am not a relative or employee or attorney of any party, nor am I financially interested in the outcome of this action.

This the 6th day of November 2019.

*Valerie N. Almand*

VALERIE N. ALMAND, RPR, CRR, CCR, CSR-B-531